

HOUSE BILL NO. 760

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT ENACTING A 4 PERCENT SALES TAX AND USE TAX ON TANGIBLE PERSONAL PROPERTY AND SERVICES; ALLOWING CERTAIN SALES TAX AND USE TAX EXEMPTIONS, INCLUDING UNPREPARED FOOD ITEMS, MEDICAL ITEMS, DRUGS, FUEL, AND UTILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO THE STREAMLINED SALES AND USE TAX AGREEMENT; IMPLEMENTING APPROPRIATE PROVISIONS OF THE STREAMLINED SALES AND USE TAX AGREEMENT; EXEMPTING CLASS EIGHT PERSONAL PROPERTY FROM THE SALES TAX OR USE TAX; PROVIDING RESIDENTIAL PROPERTY TAX RELIEF FOR THE ELDERLY; REPEALING THE MONTANA INDIVIDUAL INCOME TAX; ELIMINATING CERTAIN CREDITS AGAINST THE MONTANA INDIVIDUAL INCOME TAX; AMENDING SECTIONS 5-12-303, 7-13-308, 7-14-1133, 7-14-1636, 7-21-3710, 7-34-2416, 13-13-213, 15-1-101, 15-1-205, 15-1-206, 15-1-208, 15-1-211, 15-1-302, 15-1-501, 15-1-503, 15-2-201, 15-2-302, 15-6-193, 15-8-408, 15-30-163, 15-30-164, 15-30-171, 15-30-174, 15-30-175, 15-30-176, 15-30-246, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1121, 15-31-102, 15-31-113, 15-31-131, 15-31-150, 15-31-161, 15-31-162, 15-32-104, 15-32-106, 15-32-303, 15-32-402, 15-32-403, 15-32-404, 15-32-502, 15-32-503, 15-32-505, 15-32-510, 15-32-602, 15-32-610, 15-33-106, 15-50-207, 15-61-204, 15-62-208, 15-63-202, 15-68-101, 15-68-102, 15-68-110, 15-68-201, 15-68-202, 15-68-206, 15-68-207, 15-68-401, 15-68-402, 15-68-405, 15-68-501, 15-68-502, 15-68-505, 15-68-510, 15-68-801, 15-68-815, 17-5-1102, 17-6-311, 17-6-316, 17-6-602, 17-7-111, 19-2-303, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-101, 19-20-706, 19-21-212, 19-50-101, 20-25-503, 20-25-504, 33-27-101, 33-27-102, 33-27-103, 37-4-104, 39-51-1301, 39-51-2402, 53-2-211, 53-6-1001, 67-11-303, 87-2-102, 87-2-105, 87-5-121, AND 90-8-202, MCA; REPEALING SECTIONS 2-18-1312, 15-1-102, 15-1-230, 15-1-231, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125, 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146, 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154, 15-30-155, 15-30-156, 15-30-157, 15-30-165, 15-30-166, 15-30-167, 15-30-168, 15-30-180, 15-30-182, 15-30-183, 15-30-186, 15-30-187, 15-30-188, 15-30-189, 15-30-190, 15-30-191, 15-30-192, 15-30-201, 15-30-202, 15-30-203,

1 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210, 15-30-215, 15-30-241,
2 15-30-247, 15-30-248, 15-30-249, 15-30-250, 15-30-251, 15-30-255, 15-30-256, 15-30-257, 15-30-301,
3 15-30-302, 15-30-303, 15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310, 15-30-311, 15-30-312,
4 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331, 15-30-601, 15-30-602,
5 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-32-109, 15-32-115, 15-32-201, 15-32-202, 15-32-203,
6 15-61-202, AND 15-62-207, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY
7 DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 5-12-303, MCA, is amended to read:

12 **"5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may
13 investigate and examine the costs and revenue of state government activities and may examine and obtain
14 copies of the records, books, and files of any state agency, including confidential records.

15 (2) When confidential records and information are obtained from a state agency, the legislative fiscal
16 analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records
17 and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall
18 develop policies to prevent the unauthorized disclosure of confidential records and information obtained from
19 state agencies.

20 ~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under~~
21 ~~15-30-303. The department of revenue shall make individual income tax data available by removing names,~~
22 ~~addresses, occupations, social security numbers, and taxpayer identification numbers. The department of~~
23 ~~revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as~~
24 ~~are individual income tax returns.~~

25 ~~(4)~~(3) Within 1 day after the legislative finance committee presents its budget analysis to the legislature,
26 the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement
27 recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This
28 information must be filed in the respective offices and be made available to the legislature and the public. In
29 preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst
30 shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

1 ~~(5)~~(4) This section does not authorize publication or public disclosure of information if the law prohibits
2 publication or disclosure."
3

4 **Section 2.** Section 7-13-308, MCA, is amended to read:

5 **"7-13-308. Revenue bonds and obligations.** (1) A joint district may borrow money for any purpose
6 provided in this part and issue bonds, including refunding bonds, in a form and upon terms as ~~it may determine~~
7 the joint district determines, payable from any revenue of the joint district, including revenue from:

- 8 (a) service charges authorized in 7-13-307;
9 (b) grants or contributions from the state or federal government; or
10 (c) other sources.

11 (2) The bonds may be issued by resolution of the joint district without an election and without any
12 limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and
13 interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the
14 same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated
15 in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible
16 to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the
17 revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that
18 year.

19 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
20 Except as otherwise provided in this part, bonds issued pursuant to this part by a joint district may be payable
21 in principal and interest solely from revenues of the joint district and must state on their face the applicable
22 limitations or restrictions regarding the source from which the principal and interest are payable.

23 (4) Bonds issued by a joint district under this part are issued for an essential public and governmental
24 purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~

25 (5) For the security of any bond, the joint district may by resolution make and enter into any covenant,
26 agreement, or indenture. The sums required from time to time to pay principal and interest and to create and
27 maintain a reserve for the bonds may be paid from any revenue referred to in this part prior to the payment of
28 current costs of operation and maintenance of the solid waste management system."
29

30 **Section 3.** Section 7-14-1133, MCA, is amended to read:

1 **"7-14-1133. Bonds and obligations.** (1) Except for providing financial support to a private development
2 organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the
3 economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any
4 of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The
5 bonds may be in the form and upon terms as it determines, payable out of any revenue of the authority, including
6 revenue derived from:

- 7 (a) any port or transportation and storage facility;
8 (b) taxes levied pursuant to 7-14-1131 or 67-10-402;
9 (c) grants or contributions from the federal government; or
10 (d) other sources.

11 (2) The bonds may be issued by resolution of the authority, without an election and without any limitation
12 of amount, except that bonds may not be issued at any time if the total amount of principal and interest to
13 become due in any year on the bonds and on any then outstanding bonds for which revenue from the same
14 source is pledged exceeds the amount of revenue to be received in that year, as estimated in the resolution
15 authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose,
16 maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the
17 revenue from the pledged source in ~~such~~ that year at least equal to the amount of principal and interest due in
18 that year.

19 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
20 Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable
21 as to principal and interest solely from revenue of the authority or from particular port, transportation, storage,
22 or other facilities of the authority. The bonds must state on their face the applicable limitations or restrictions
23 regarding the source from which principal and interest are payable.

24 (4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are
25 declared to be issued for an essential public and governmental purpose by a political subdivision ~~within the~~
26 ~~meaning of 15-30-111(2)(a).~~

27 (5) (a) For the security of bonds, the authority, county, or municipality may by resolution make and enter
28 into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised
29 by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal
30 and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this

1 part, prior to the payment of current costs of operation and maintenance of the facilities.

2 (b) As further security for the bonds, the authority, with the approval of the governing body of the county
3 or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or
4 any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the
5 bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any
6 agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the
7 authority consider advisable. The provisions must be consistent with this part and are subject to and must be
8 in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or
9 instruments. The instrument may provide that in the event of a default in the payment of principal or interest on
10 the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or
11 instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver
12 in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged
13 property or collateral in accordance with the proceedings or the provisions of the instrument.

14 (6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenue,
15 including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide
16 financial and other support to private development organizations, including corporations organized under the
17 provisions of the development corporation act in Title 32, chapter 4. The credit of the state, county, or municipal
18 governments or their agencies or authorities may not be pledged to provide financial support to the development
19 organizations."

20
21 **Section 4.** Section 7-14-1636, MCA, is amended to read:

22 **"7-14-1636. Bonds and obligations.** (1) An authority may borrow money for any of its corporate
23 purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it
24 determines, payable out of any revenue of the authority, including revenue derived from:

- 25 (a) a railroad;
26 (b) taxes levied pursuant to 7-14-1632;
27 (c) grants or contributions from the federal government; or
28 (d) other sources.

29 (2) The bonds may be issued by resolution of the authority, without an election and without any limitation
30 of amount, except that bonds may not be issued at any time if the total amount of principal and interest to

1 become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source
2 is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution
3 authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose,
4 maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the
5 revenue from the pledged source in the year at least equal to the amount of principal and interest due in that
6 year.

7 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
8 Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from
9 revenue of the authority and must state on their face the applicable limitations or restrictions regarding the
10 source from which the principal and interest are payable.

11 (4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an
12 essential public and governmental purpose by a political subdivision ~~within the meaning of 15-30-111(2)(a).~~

13 (5) For the security of the bonds, the authority may by resolution make and enter into any covenant,
14 agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality
15 under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and
16 to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the
17 payment of current costs of operation and maintenance of the facilities."
18

19 **Section 5.** Section 7-21-3710, MCA, is amended to read:

20 **"7-21-3710. Tax credits for employers in empowerment zone.** (1) There is allowed to an employer
21 a credit against taxes imposed under ~~15-30-103~~, 15-31-121, 15-31-122, or 33-2-705 for an increase in net
22 employees as provided in this section.

23 (2) To be eligible for a credit under this section, the owner of a business located in an empowerment
24 zone:

25 (a) shall conduct a business in a facility within the empowerment zone in which retail sales of tangible
26 personal property, other than that manufactured in the business facility, are not in excess of 10% of the business
27 conducted in the facility, whether measured by number of employees doing retail sales, by square footage, or
28 by dollar volume; and

29 (b) shall increase employment in the empowerment zone with employees:

30 (i) who are employed for at least 1,750 hours a year in permanent employment intended to last at least

1 3 years;

2 (ii) who were not employed by the business in the preceding 12 months;

3 (iii) at least 35% of whom were residents of the county in which the empowerment zone is located at the
4 time they were hired by the business;

5 (iv) who are provided a health benefit plan for employees in accordance with 33-22-1811(3)(d) of which
6 at least 50% of the premium is paid by the business; and

7 (v) who are paid for job duties performed at the empowerment zone location of the business.

8 (3) (a) For the purposes of subsection (2)(b)(i), an employee hired in the last 90 days of a year is
9 considered to be an employee beginning employment in the following year. If an employee terminates
10 employment, a replacement employee may be hired and the credit for the combined length of time may be
11 claimed.

12 (b) For the purposes of subsection (2)(b)(iii), if an employee for whom a credit was claimed and who
13 counted as an empowerment zone county resident for credit eligibility in either of the immediate 2 preceding
14 years terminates employment, the replacement employee must have been a resident of the county in which the
15 empowerment zone is located at the time the replacement employee is hired.

16 (4) An employer shall apply for certification to claim a credit under the provisions of this section. The
17 department shall require a report that contains detailed information to determine whether an employer qualifies
18 under subsections (2) and (3). The information must be detailed enough for auditing purposes. The department
19 is authorized to inspect employers applying for certification or who have obtained certification.

20 (5) The department shall certify to the department of revenue or the state auditor's office, as applicable,
21 whether a business may claim a credit under the provisions of this section as well as how many additional
22 employees qualify and the year of initial employment of qualifying employees."

23
24 **Section 6.** Section 7-34-2416, MCA, is amended to read:

25 **"7-34-2416. Tax-exempt status of bonds.** Bonds issued by a county pursuant to the provisions of
26 7-34-2411 and 7-34-2413 through 7-34-2418 are declared to be issued for an essential public and governmental
27 purpose by a political subdivision within the meaning of 15-30-111(2)(a)."

28
29 **Section 7.** Section 13-13-213, MCA, is amended to read:

30 **"13-13-213. Transmission of application to election administrator -- delivery of ballot.** (1) Except

as provided in subsection (3), the elector shall mail the application directly to the election administrator or deliver the application in person to the election administrator. With the exception of an immediate family member, ~~as defined in 15-30-602~~, or a guardian, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(3) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.

(4) For the purposes of this section, "immediate family member" means a family member that is within the second degree of consanguinity or affinity."

Section 8. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property

described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(i) that is treated as an association for federal income tax purposes;

(ii) for which a valid election under section 1362 of the Internal Revenue Code, 26 U.S.C. 1362, is not in effect; and

(iii) that is not a disregarded entity.

~~(f)~~(g) The term "credit" means solvent debts, secured or unsecured, owing to a person.

~~(g)~~(h) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(i) "Disregarded entity" means a business entity:

(i) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(ii) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3).

(j) "Dividend" means:

(i) any distribution made by a C. corporation out of its earnings and profits to its shareholders or

1 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

2 (ii) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

3 (k) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,
4 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

5 (l) "Foreign government" means any jurisdiction other than the one embraced within the United States,
6 its territories, and its possessions.

7 ~~(h)~~(m) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The
8 terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas
9 found in any coal formation.

10 (n) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in
11 section 61 of the Internal Revenue Code, 26 U.S.C. 61.

12 ~~(j)~~(o) The term "improvements" includes all buildings, structures, fences, and improvements situated
13 upon, erected upon, or affixed to land. When the department determines that the permanency of location of a
14 mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home,
15 or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or
16 housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot
17 feasibly be relocated and only when the wheels are removed.

18 (p) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be
19 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
20 provisions as they may be otherwise labeled or further amended.

21 (g) "Knowingly" has the meaning provided in 45-2-101.

22 ~~(j)~~(r) The term "leasehold improvements" means improvements to mobile homes and mobile homes
23 located on land owned by another person. This property is assessed under the appropriate classification, and
24 the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold
25 improvements are a lien only on the leasehold improvements.

26 (s) "Limited liability company" means a limited liability company, a domestic limited liability company,
27 or a foreign limited liability company as defined in 35-8-102.

28 (t) "Limited liability partnership" has the meaning provided in 35-10-102.

29 ~~(k)~~(u) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas,
30 bison, ostriches, rheas, emus, and domestic ungulates.

1 (v) "Lottery winnings" means income paid either in lump sum or in periodic payments to a person on
2 a lottery ticket purchased in Montana.

3 ~~(t)~~(w) The term "manufactured home" means a residential dwelling built in a factory in accordance with
4 the United States department of housing and urban development code and the federal Manufactured Home
5 Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in
6 61-1-501 and in subsection ~~(1)(m)~~ (1)(x) of this section, a housetrailer, as defined in 61-1-501, or a mobile home
7 or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into
8 effect on June 15, 1976.

9 ~~(m)~~(x) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer
10 coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an
11 independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet
12 in length used as a principal residence.

13 (y) (i) "Montana source income" means:

14 (A) all compensation for services performed in this state while engaged in business in this state;

15 (B) gain attributable to the sale or other transfer of tangible property that is located in the state or that
16 is sold or otherwise transferred or used or held in connection with a trade, business, or occupation carried on
17 in the state;

18 (C) gain attributable to the sale or other transfer of intangible property received or accrued while
19 engaged in business in the state;

20 (D) interest received or accrued while engaged in business in the state or from an installment sale of
21 real property or tangible commercial or business personal property located in the state;

22 (E) dividends received or accrued while engaged in business in the state;

23 (F) net income or loss derived from a trade, business, profession, or occupation carried on in the state
24 or while engaged in business in the state;

25 (G) net income or loss derived from farming activities carried on in the state or while engaged in
26 business in the state;

27 (H) net rents from real property and tangible personal property located in the state or received or
28 accrued while engaged in business in the state;

29 (I) net royalties from real property and from tangible personal property to the extent the property is used
30 in the state or the net royalties are received or accrued while engaged in business in the state. The extent of use

1 in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days
2 of physical location of the property in the state during the royalty period in the tax year and the denominator of
3 which is the number of days of physical location of the property everywhere during all royalty periods in the tax
4 year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in
5 the state in which it was located at the time the person paying the royalty obtained possession.

6 (J) patent royalties to the extent the person paying them employs the patent in production, fabrication,
7 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are
8 received or accrued while engaged in business in the state;

9 (K) net copyright royalties to the extent printing or other publication originates in the state or the royalties
10 are received or accrued while engaged in business in the state;

11 (L) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

12 (I) derived from a trade, business, occupation, or profession carried on in the state;

13 (II) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
14 property located in the state; or

15 (III) taken into account while engaged in business in the state;

16 (M) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or
17 item of income, gain, loss, deduction, or credit:

18 (I) derived from a trade, business, occupation, or profession carried on in the state;

19 (II) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of
20 property located in the state; or

21 (III) taken into account while engaged in business in the state; and

22 (N) any other income attributable to the state, including but not limited to lottery winnings, state and
23 federal tax refunds, recapture of tax benefits, and capital loss addbacks.

24 (ii) The term does not include interest paid on loans held by out-of-state financial institutions recognized
25 as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real
26 or personal property located in the state, if the loan is originated by a lender doing business in Montana and
27 assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic
28 inspection of the security.

29 (z) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this
30 title.

1 (aa) "Nonresident" means a natural person who is not a resident.

2 (bb) "Paid", for the purposes of deductions and credits, means paid or accrued or paid or incurred, and
3 the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting
4 upon the basis of which the taxable income is computed under this title.

5 (cc) "Partner" means a member of a partnership or a manager or member of any other entity, if treated
6 as a partner for federal income tax purposes.

7 (dd) "Partnership" means a general or limited partnership, limited liability partnership, limited liability
8 company, or other entity, if treated as a partnership for federal income tax purposes.

9 (ee) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

10 (ff) (i) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited
11 liability partnership, corporation, or any other legal entity.

12 (ii) As used in Title 15, chapter 31, the term does not include an individual.

13 ~~(n)~~(gg) The term "personal property" includes everything that is the subject of ownership but that is not
14 included within the meaning of the terms "real estate" and "improvements" and "intangible personal property"
15 as that term is defined in 15-6-218.

16 ~~(h)~~(hh) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in
17 domestication to produce food or feathers.

18 ~~(p)~~(ii) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and
19 things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize
20 the taxation of the stocks of a company or corporation when the property of the company or corporation
21 represented by the stocks is within the state and has been taxed.

22 (jj) "Purposely" has the meaning provided in 45-2-101.

23 (kk) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated
24 or established organization that:

25 (i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

26 (ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf
27 of a tax-exempt organization.

28 ~~(q)~~(ll) The term "real estate" includes:

29 (i) the possession of, claim to, ownership of, or right to the possession of land;

30 (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and

1 Title 15, chapter 23, part 8;

2 (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States;

3 and

4 (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

5 (mm) "Received", for the purpose of computation of taxable income, means received or accrued, and
6 the term "received or accrued" must be construed according to the method of accounting upon the basis of which
7 the taxable income is computed under this title.

8 ~~(n)~~(nn) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking,
9 and winter sports, including but not limited to skiing, skating, and snowmobiling.

10 ~~(o)~~(oo) "Research and development firm" means an entity incorporated under the laws of this state or
11 a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical
12 analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific
13 and technical nature into practical application for experimental and demonstration purposes, including the
14 experimental production and testing of models, devices, equipment, materials, and processes.

15 (pp) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the
16 Internal Revenue Code, 26 U.S.C. 1362, is in effect.

17 (qq) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
18 proportion to their previous holdings.

19 ~~(r)~~(rr) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is
20 listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent
21 foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

22 (ss) "Tax year" means the person's tax year for federal income tax purposes.

23 (tt) "Taxable income" means the adjusted gross income of a person less the deductions and exemptions
24 provided for in this title.

25 ~~(u)~~(uu) The term "taxable value" means the percentage of market or assessed value as provided for in
26 Title 15, chapter 6, part 1.

27 (vv) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other
28 obligation imposed by this title.

29 (2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city,
30 incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or

1 organized body authorized by law to establish tax levies for the purpose of raising public revenue.

2 (3) The term "state board" or "board" when used without other qualification means the state tax appeal
3 board."

4
5 **Section 9.** Section 15-1-205, MCA, is amended to read:

6 **"15-1-205. Biennial report -- contents.** (1) The department shall transmit to the governor 20 days
7 before the meeting of the legislature and make available to the legislature a report of the department showing
8 all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions
9 of 5-11-210 in preparing the report.

10 (2) The report must also include the statewide average effective tax rate of taxable property in each
11 class of property. The department may determine whether an appropriate effective tax rate may be derived for
12 net proceeds, gross proceeds, agricultural land, and forest land.

13 (3) The report or supplements to the report may also include:

14 (a) the gross dollar amount of revenue loss attributable to:

15 (i) ~~personal income~~ and corporation license tax exemptions;

16 (ii) property tax exemptions for which application to the department is necessary;

17 (iii) deferral of income;

18 (iv) credits allowed against ~~Montana personal income tax~~ or Montana corporation license tax, reported
19 separately;

20 (v) deductions from income; and

21 (vi) any other identifiable preferential treatment of income or property;

22 (b) any change in tax revenue of the state or any unit of local government attributable to a change in
23 federal tax law; and

24 (c) any change in the revenue of any unit of local government attributable to a change in state tax law.

25 (4) The data described in subsection (3), if reported, must be related to the income and age of the
26 taxpayer whenever the information is available.

27 (5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known
28 purpose of the preferential treatment.

29 (b) Based upon the purpose of the preferential treatment, the department shall outline the available data
30 necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Section 10. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver of penalties -- interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, ~~in its discretion,~~ waive interest not to exceed \$100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, ~~as provided for in 15-30-304,~~ the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer."

Section 11. Section 15-1-208, MCA, is amended to read:

"15-1-208. Signature alternatives for electronically filed returns. For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, ~~30~~ 31 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer."

Section 12. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform dispute review procedure -- notice -- appeal. (1) The department shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an ~~employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor.~~ The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department ~~shall~~ must provide written notice to a person or other entity advising ~~them~~ of a dispute over matters administered by the department.

(b) The person or other entity ~~shall~~ must have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of ~~their~~ the opportunity to resolve the dispute with the person responsible for the notice and ~~their~~ the right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 13. Section 15-1-302, MCA, is amended to read:

"15-1-302. Witnesses -- oaths, contempt, and fees. (1) Oaths to witnesses in any investigation by the department may be administered by the director of revenue or the director's agent.

(2) (a) If a witness fails to obey a summons to appear before the department or refuses to testify or answer any material question or to produce records, books, papers, or documents when required to do so, the department shall institute proceedings in the district court to compel obedience to a summons or order of the

board or to punish the witness for neglect or refusal to obey the summons.

(b) ~~As required by 15-30-209, the~~ The department, in addition to instituting proceedings to compel obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order requiring the payment of all penalties assessed for the employer's failure to report.

(3) A person who testifies falsely in any material matter under consideration by the department is guilty of perjury and shall be punished accordingly.

(4) Witnesses attending an investigation by the department must receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the department."

Section 14. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

~~(a) income taxes, interest, and penalties collected under chapter 30;~~

~~(b)~~(a) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;

~~(c)~~(b) oil and natural gas production taxes distributed to the general fund under 15-36-331;

~~(d)~~(c) electrical energy producer's license taxes under chapter 51;

~~(e)~~(d) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

~~(f)~~(e) liquor license taxes under Title 16;

~~(g)~~(f) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

~~(h)~~(g) estate taxes under Title 72, chapter 16; and

~~(i)~~(h) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax

1 revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department
2 of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

3 (4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded.
4 All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are
5 currently being recorded.

6 (5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state
7 special revenue fund to the credit of the department."
8

9 **Section 15.** Section 15-1-503, MCA, is amended to read:

10 **"15-1-503. Refund of overpayment -- procedure.** (1) When there has been an overpayment of the
11 estate tax collected by county treasurers or any other tax collected by the department and there is no law
12 providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any
13 interest and penalty due the taxpayer, as provided in subsection (2).

14 (2) A refund or payment is not allowed unless a claim is filed by the taxpayer before the expiration of
15 5 years from the time that the tax was paid. Within 6 months after the claim is filed, the department shall
16 examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be
17 made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall
18 notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding
19 a hearing, the determination of the department may be reviewed as provided by ~~15-30-148~~ 15-2-303."
20

21 **Section 16.** Section 15-2-201, MCA, is amended to read:

22 **"15-2-201. Powers and duties.** (1) It is the duty of the state tax appeal board to:

23 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties
24 and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county
25 tax appeal board members to attend if possible, and the cost of their attendance must be paid from the
26 appropriation of the state tax appeal board;

27 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because
28 of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided
29 for in 15-15-101(2) to hear an appeal.

30 (c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, ~~except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, and penalties.~~

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall ~~thereupon~~ institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and must be punished accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.

(3) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law."

Section 17. Section 15-2-302, MCA, is amended to read:

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or
- (d) any other matter in which the appeal is provided by law.

(2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, or

1 in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant
2 were properly reported to the department, any interested party, ~~as defined in 15-30-257(1)(e)~~, and the
3 department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with
4 the board; and at that time mail a copy to the complainant. The answer must set forth the department's response
5 to each ground for and type of relief demanded in the complaint.

6 (4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with
7 the contested case provisions of the Montana Administrative Procedure Act.

8 (b) (i) In an appeal regarding the determination of whether wages earned by an unemployment
9 insurance claimant were properly reported to the department, the appeal must be conducted informally and may,
10 in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a
11 contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the
12 hearing or making its decision, is not bound by the Montana Rules of Evidence.

13 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.

14 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
15 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
16 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to
17 the extent that it does not conflict with 15-2-303.

18 (6) As used in this section, "interested party" means the claimant, the employer, or the department of
19 labor and industry."

20
21 **Section 18.** Section 15-6-193, MCA, is amended to read:

22 **"15-6-193. (Temporary) Extended property tax assistance -- phasein.** (1) For the purpose of
23 mitigating extraordinary market value increases during the revaluation cycle that ended December 31, 2002, the
24 rate of taxation of class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set in
25 15-6-134(2)(a) is adjusted in this section for properties with extraordinary increases in market value with owners
26 that meet income requirements.

27 (2) An annual application on a form provided by the department is required to receive a tax rate
28 adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted
29 only for the current tax year and may not be granted for a previous year.

30 (3) A rate adjustment may not be granted for:

1 (a) any property that ~~was~~ is sold or for which the ownership ~~was~~ is changed ~~after December 31, 2002,~~
2 unless the change in ownership is between husband and wife or parent and child with only nominal actual
3 consideration or the change is pursuant to a divorce decree;

4 (b) the value of new construction, including remodeling, on the property ~~occurring after December 31,~~
5 ~~2002,~~ that is greater than 25% of the market value of the improvements; or

6 (c) a land use change ~~occurring after December 31, 2002,~~ that increases the market value of the land
7 by more than 25%.

8 (4) For the purposes of determining the adjustment in the class four property tax rate in this section, the
9 following provisions apply:

10 (a) The change in taxable value before reappraisal is the 2002 tax year value adjusted for any new
11 construction or destruction that occurred in the 2002 tax year. The taxable value before reappraisal for the 2003
12 tax year and subsequent years is the same as the 2002 tax year value if no new construction, destruction, land
13 splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other
14 changes are made to the property during 2002 or subsequent tax years.

15 (b) The percentage increase in taxable value is measured as the percentage change in taxable value
16 before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by
17 multiplying the value before reappraisal in 2003 times 0.69 times 0.0346. The taxable value after reappraisal
18 is calculated by multiplying the 2003 market value after reappraisal times 0.66 times 0.0301.

19 (c) The dollar increase in tax liability is measured as the change in tax liability before reappraisal to the
20 tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before
21 reappraisal in 2003 times 0.69 times 0.0346 times the tax year 2002 mill levy applied to the property. The tax
22 liability after reappraisal is calculated by multiplying the 2003 market value after reappraisal times 0.66 times
23 0.0301 times the tax year 2002 mill levy applied to the property. The tax year 2002 mill levy is the total of all mills
24 applied to the property for fiscal year 2003.

25 (d) Total household income is the sum of the income of all members of the household and all other
26 persons who are owners of the property. Income, as used in this section, includes income from all sources,
27 including net business income and otherwise tax-exempt income of all types but not including social security
28 income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before
29 deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also
30 includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A

household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(e) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is \$25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

~~—— (i) For tax year 2003, the tax rate is 0.03598 times the value before reappraisal divided by the 2003 phase-in value.~~

~~—— (ii) For tax year 2004, the tax rate is 0.03759 times the value before reappraisal divided by the 2004 phase-in value.~~

~~(iii)(i)~~ For tax year 2005, the tax rate is 0.03932 times the value before reappraisal divided by the 2005 phase-in value.

~~(iv)(ii)~~ For tax year 2006, the tax rate is 0.04109 times the value before reappraisal divided by the 2006 phase-in value.

~~(v)(iii)~~ For tax year 2007, the tax rate is 0.04289 times the value before reappraisal divided by the 2007 phase-in value.

~~(vi)(iv)~~ For tax year 2008 and after, the tax rate is 0.04485 times the value before reappraisal divided by the 2008 phase-in value.

(b) If total household income is greater than \$25,000 but less than or equal to \$50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

~~—— (i) For tax year 2003, the tax rate is 0.03633 times the value before reappraisal divided by the 2003 phase-in value.~~

~~—— (ii) For tax year 2004, the tax rate is 0.03828 times the value before reappraisal divided by the 2004 phase-in value.~~

~~(iii)(i)~~ For tax year 2005, the tax rate is 0.04038 times the value before reappraisal divided by the 2005 phase-in value.

~~(iv)(ii)~~ For tax year 2006, the tax rate is 0.04251 times the value before reappraisal divided by the 2006 phase-in value.

~~(v)(iii)~~ For tax year 2007, the tax rate is 0.04467 times the value before reappraisal divided by the 2007 phase-in value.

~~(vi)(iv)~~ For tax year 2008 and after, the tax rate is 0.04702 times the value before reappraisal divided by the 2008 phase-in value.

(c) If total household income is greater than \$50,000 but less than or equal to \$75,000, the percentage increase in taxable value is greater than 36%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

~~—— (i) For tax year 2003, the tax rate is 0.03668 times the value before reappraisal divided by the 2003 phase-in value.~~

~~—— (ii) For tax year 2004, the tax rate is 0.03898 times the value before reappraisal divided by the 2004 phase-in value.~~

~~(iii)(i)~~ For tax year 2005, the tax rate is 0.04143 times the value before reappraisal divided by the 2005 phase-in value.

~~(iv)(ii)~~ For tax year 2006, the tax rate is 0.04392 times the value before reappraisal divided by the 2006 phase-in value.

~~(v)(iii)~~ For tax year 2007, the tax rate is 0.04646 times the value before reappraisal divided by the 2007 phase-in value.

~~(vi)(iv)~~ For tax year 2008 and after, the tax rate is 0.04919 times the value before reappraisal divided by the 2008 phase-in value.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. ~~Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-303.~~

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section, "entity" means:

(a) a corporation, fiduciary, or pass-through entity, as those terms are defined in ~~15-30-101~~ 15-1-101; and

(b) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person.
(Terminates December 31, 2008--sec. 14, Ch. 606, L. 2003.)

15-6-193. (Effective January 1, 2009) Extended property tax assistance -- phasein. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles that begin after December 31, 2008, the rate of taxation of class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set in 15-6-134(2)(a) is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

(a) (i) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal. The taxable value after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal.

(ii) The tax rate before reappraisal is the tax rate that was in effect during the last year of the previous reappraisal cycle.

(iii) The tax rate after reappraisal is the tax rate that will be in effect during the last year of the current

1 reappraisal cycle.

2 (iv) The homestead exemption before reappraisal is the homestead exemption that was in effect during
3 the last year of the previous reappraisal cycle.

4 (v) The homestead exemption after reappraisal is the homestead exemption that will be in effect during
5 the last year of the current reappraisal cycle.

6 (b) The dollar increase in tax liability is measured as the percentage change in tax liability before
7 reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the
8 value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the
9 tax rate before reappraisal times the mill levy applied to the property before reappraisal. The tax liability after
10 reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the
11 homestead exemption after reappraisal times the tax rate after reappraisal times the mill levy applied to the
12 property before reappraisal. The mill levy applied to the property before reappraisal is the total of all mills applied
13 to the property in the last year of the previous reappraisal cycle.

14 (c) Total household income is the sum of the income of all members of the household and all other
15 persons who are owners of the property. Income, as used in this section, includes income from all sources,
16 including net business income and otherwise tax-exempt income of all types but not including social security
17 income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before
18 deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also
19 includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A
20 household is an association of persons who live in the same dwelling, sharing its furnishings, facilities,
21 accommodations, and expenses. For single-family rental dwellings, total household income does not include
22 the income of the tenant.

23 (d) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

24 (5) (a) If total household income is \$25,000 or less, the percentage increase in taxable value is greater
25 than 24%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted
26 tax rate. The adjusted tax rate must be calculated such that the total increase in taxable value over the
27 reappraisal cycle is 24% and such that the change in taxable value is phased in over the reappraisal cycle in
28 equal increments.

29 (b) If total household income is greater than \$25,000 but less than or equal to \$50,000, the percentage
30 increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then

1 the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated such that the total
2 increase in taxable value over the reappraisal cycle is 30% and such that the change in taxable value is phased
3 in over the reappraisal cycle in equal increments.

4 (c) If total household income is greater than \$50,000 but less than or equal to \$75,000, the percentage
5 increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then
6 the property qualifies for an adjusted tax rate. The adjusted tax rate will be calculated such that the total increase
7 in taxable value over the reappraisal cycle is 36% and such that the change in taxable value is phased in over
8 the reappraisal cycle in equal increments.

9 (d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of
10 1%.

11 (6) A person who applies for a tax rate adjustment under this section shall provide the department with
12 documentation of total household income and other information that the department considers necessary to
13 determine the person's eligibility for the tax rate adjustment. ~~Documents provided to the department to determine~~
14 ~~eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-303.~~

15 (7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a
16 tax rate adjustment is guilty of false swearing under 45-7-202.

17 (8) For the purposes of this section, "entity" means:

18 (a) a corporation, fiduciary, or pass-through entity, as those terms are defined in ~~15-30-101~~ 15-1-101;
19 and

20 (b) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person."
21

22 **Section 19.** Section 15-8-408, MCA, is amended to read:

23 **"15-8-408. Personal property.** Personal property, other than livestock, subject to taxation or a fee in
24 lieu of tax in the state ~~shall be~~ is taxable in the taxing jurisdiction where it is located on January 1, whether or
25 not the ~~same property~~ is owned, claimed, or possessed by the person, ~~as defined in 15-1-102~~, owning, claiming,
26 or possessing it on January 1."
27

28 **Section 20.** Section 15-30-163, MCA, is amended to read:

29 **"15-30-163. Credit for contributions to university system or private college foundations.** (1) ~~An~~
30 ~~individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax

1 credit against taxes imposed by ~~15-30-103 or~~ 15-31-101 in an amount equal to 10% of the aggregate amount
2 of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the
3 Montana university system foundations or a general endowment fund of a Montana private college or its
4 foundation. The maximum credit that a taxpayer may claim in a year under this section is \$500. The credit
5 allowed under this section may not exceed the taxpayer's ~~income~~ tax liability.

6 (2) There is no carryback or carryforward of the credit permitted under this section, and the credit must
7 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

8 (3) (a) For the purposes of this section, "foundation" means a nonprofit organization that is created
9 exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is
10 exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

11 (b) For the purposes of this section, "Montana private college" means a nonprofit private educational
12 institution:

13 (i) whose main campus and primary operations are within the state; and

14 (ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or
15 regional accrediting agency recognized by the board of regents of higher education."

16
17 **Section 21.** Section 15-30-164, MCA, is amended to read:

18 **"15-30-164. Credit for alternative fuel motor vehicle conversion.** (1) (a) Except as provided in
19 subsection (1)(b), ~~an individual,~~ a corporation, a partnership, or a small business corporation as defined in
20 15-30-1101 is allowed a tax credit against taxes imposed by ~~15-30-103 or~~ 15-31-101 for equipment and labor
21 costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

22 (b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative
23 fuel that it sells.

24 (2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50%
25 of the equipment and labor costs incurred but the credit may not exceed:

26 (a) \$500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

27 (b) \$1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

28 (3) For the purposes of this section, "alternative fuel" means:

29 (a) natural gas;

30 (b) liquefied petroleum gas;

1 (c) liquefied natural gas;
2 (d) hydrogen;
3 (e) electricity; or
4 (f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any
5 combination of them.

6 (4) (a) The credit allowed under this section may not exceed the taxpayer's ~~income~~ tax liability.
7 (b) There is no carryback or carryforward of the credit permitted under this section, and the credit must
8 be applied in the year the conversion is made, as determined by the taxpayer's accounting method."
9

10 **Section 22.** Section 15-30-171, MCA, is amended to read:

11 **"15-30-171. Residential property tax credit relief for elderly -- definitions.** As used in 15-30-171
12 through 15-30-179, the following definitions apply:

13 (1) "Claim period" means the ~~tax year for individuals required to file Montana individual income tax~~
14 ~~returns and the calendar year for individuals not required to file returns.~~

15 (2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

16 (3) "Department" means the department of revenue.

17 (4) "Gross household income" means all income received by all individuals of a household while they
18 are members of the household.

19 (5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by
20 the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the
21 landlord.

22 (6) "Homestead" means:

23 (a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana
24 and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a
25 dwelling; or

26 (b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal
27 housing authority as provided in Title 7, chapter 15.

28 (7) (a) "Household" means an association of persons who live in the same dwelling, sharing its
29 furnishings, facilities, accommodations, and expenses.

30 (b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting \$6,300 from gross household income.

(9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 23. Section 15-30-174, MCA, is amended to read:

"15-30-174. Residential property tax credit relief for elderly -- filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted ~~at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted~~ on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(3) ~~In the event that~~ If an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(4) The department or an individual may revise a return and make a claim under 15-30-171 through

1 15-30-179 within 5 years from the last day prescribed for filing a claim for relief."

2

3 **Section 24.** Section 15-30-175, MCA, is amended to read:

4 **"15-30-175. Residential property tax ~~credit~~ relief for elderly -- form of relief.** Relief under 15-30-171
5 through 15-30-179 is a ~~credit~~ against the claimant's Montana individual income tax liability for the claim period.
6 ~~If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess shall be~~
7 ~~refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this~~
8 ~~chapter~~ payment mailed by the department to the claimant."

9

10 **Section 25.** Section 15-30-176, MCA, is amended to read:

11 **"15-30-176. Residential property tax ~~credit~~ relief for elderly -- computation of relief.** The amount
12 of the tax ~~credit~~ relief granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

13 (1) In the case of a claimant who owns the homestead for which a claim is made, the ~~credit~~ relief is the
14 amount of property tax billed less the deduction specified in subsection (4).

15 (2) In the case of a claimant who rents the homestead for which a claim is made, the ~~credit~~ relief is the
16 amount of rent-equivalent tax paid less the deduction specified in subsection (4).

17 (3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the
18 ~~credit~~ relief is:

19 (a) the amount of property tax billed on the owned portion of the homestead less the deduction specified
20 in subsection (4); plus

21 (b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction
22 specified in subsection (4).

23 (4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
\$0 - \$999	\$0
\$1,000 - \$1,999	\$0
\$2,000 - \$2,999	the product of .006 times the household income
\$3,000 - \$3,999	the product of .016 times the household income
\$4,000 - \$4,999	the product of .024 times the household income
\$5,000 - \$5,999	the product of .028 times the household income

1	\$6,000 - \$6,999	the product of .032 times the household income
2	\$7,000 - \$7,999	the product of .035 times the household income
3	\$8,000 - \$8,999	the product of .039 times the household income
4	\$9,000 - \$9,999	the product of .042 times the household income
5	\$10,000 - \$10,999	the product of .045 times the household income
6	\$11,000 - \$11,999	the product of .048 times the household income
7	\$12,000 & over	the product of .050 times the household income

8 (5) For a claimant whose household income is \$35,000 or more but less than \$45,000, the amount of
 9 the credit relief is equal to the credit relief calculated under this section multiplied by the decimal equivalent of
 10 a percentage figure according to the following table:

11	Gross household income	Percentage of <u>credit relief</u> allowed
12	\$35,000 - \$37,500	40%
13	\$37,501 - \$40,000	30%
14	\$40,001 - \$42,500	20%
15	\$42,501 - \$44,999	10%
16	\$45,000 or more	0%

17 (6) The credit amount of relief granted may not exceed \$1,000."

18

19 **Section 26.** Section 15-30-246, MCA, is amended to read:

20 **"15-30-246. Policy and purpose.** (1) It is the policy and intent of the legislature that lottery ~~proceeds~~
 21 winnings received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased
 22 in Montana under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence
 23 of the person or entity that redeems the ticket. This policy statement affirms that the legislature has always
 24 considered lottery ~~proceeds~~ winnings to be Montana source income.

25 ~~(2) The purpose of 15-30-247 is to ensure that lottery proceeds that are Montana source income are~~
 26 ~~subject to the withholding tax under the individual income tax laws of the state."~~

27

28 **Section 27.** Section 15-30-1101, MCA, is amended to read:

29 **"15-30-1101. Definition of "small business corporation".** (1) Except as provided in subsection (2),
 30 the term "small business corporation" is synonymous with "S. corporation" as defined in ~~15-30-101~~ 15-1-101 and

means a corporation for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is in effect.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

Section 28. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities -- information returns required. ~~(1) Except as otherwise provided:~~

~~—— (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;~~

~~—— (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and~~

~~—— (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.~~

~~(2)(1) Except as otherwise provided, each partner of a partnership, described in subsection (1)(a), each shareholder of an S. corporation, described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c) a disregarded entity, the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an a disregarded entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.~~

~~(3)(2) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of~~

1 accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under ~~Title 15,~~
2 ~~this chapter 30 or 31,~~ to the extent that the aggregate deductions allowed for federal income tax purposes under
3 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under
4 15-31-114(1)(b)(i).

5 ~~(4)(3)~~ (a) A partnership that has Montana source income shall on or before the 15th day of the 4th
6 month following the close of its annual accounting period file ~~an information a~~ return on forms prescribed by the
7 department and a copy of its federal partnership return. The return must include:

- 8 (i) the name, address, and social security or federal identification number of each partner;
9 (ii) the partnership's Montana source income;
10 (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item
11 of income, gain, loss, deduction, or credit;
12 (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain,
13 loss, deduction, or credit from all sources; and
14 (v) any other information the department prescribes.

15 (b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month
16 following the close of its annual accounting period file ~~an information a~~ return on forms prescribed by the
17 department and a copy of its federal S. corporation return. The return must include:

- 18 (i) the name, address, and social security or federal identification number of each shareholder;
19 (ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and
20 nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss,
21 deduction, or credit;
22 (iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss,
23 deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
24 (iv) any other information the department prescribes.

25 (c) A disregarded entity that has Montana source income shall furnish the information and file the
26 returns the department prescribes. The return must include:

- 27 (i) the name, address, and social security or federal identification number of each member or other
28 owner during the tax year;
29 (ii) the entity's Montana source income; and
30 (iii) any other information the department prescribes.

(d) (i) Except as provided in subsection ~~(4)(d)(ii)~~ (3)(d)(ii), a pass-through entity that fails to file ~~an~~ information a return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection ~~(4)(d)(i)~~ (3)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection ~~(4)(d)(i)~~ (3)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 29. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation ~~may elect to~~ shall file a composite return and pay a composite tax on behalf of participants. ~~A participant is a~~ each partner, shareholder, member, or other owner ~~who:~~

~~—— (a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and~~

~~—— (b) consents to be included in the filing.~~

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the ~~rates~~ rate specified in ~~15-30-103~~ 15-31-121, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The ~~electing~~ entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by ~~15-30-244~~ 15-31-502 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the ~~entity information~~ entity's return. The composite return is in lieu of ~~an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111; and a corporation income tax return required under 15-31-403.~~

(6) The composite tax is in lieu of the taxes imposed under:

~~(a) 15-30-103 and 15-30-105;~~

~~(b)~~ (a) 15-31-101 and 15-31-121; and

~~(c)~~ (b) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 30. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. ~~Consent or withholding~~ Withholding. (1) A pass-through entity that is required to file ~~an information~~ a return as provided in 15-30-1102 and that has a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity shall, on or before the due date, including extensions, for the ~~information~~ return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual,±

——— ~~(i)~~ file a composite return;

——— ~~(ii) file an agreement of the individual nonresident to:~~

~~1 (A) file a return in accordance with the provisions of 15-30-142;~~
~~2 (B) timely pay all taxes imposed with respect to income of the pass-through entity; and~~
~~3 (C) be subject to the personal jurisdiction of the state for the collection of income taxes and related~~
~~4 interest, penalties, and fees imposed with respect to the income of the pass-through entity; or~~
~~5 (iii) and remit an amount equal to the highest marginal tax rate in effect under 15-30-103 15-31-121~~
~~6 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's~~
~~7 information return;~~

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of corporation license and
income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through
entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C.
corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also
referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth
the name, address, and ~~social security or~~ federal identification number of each of that entity's partners,
shareholders, members, or other owners and information that establishes that its share of Montana source
income will be fully accounted in individual income or corporation license or income tax returns filed with the
state; ~~or~~

~~(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its~~
~~share of Montana source income reflected on the pass-through entity's information return.~~

~~(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to~~
~~subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the~~
~~income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due~~

~~date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.~~

~~(3)(2)~~ Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

~~(4)(3)~~ Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection ~~(1)(e)(iii)~~ (1)(a) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

~~(5)(4)~~ A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii); or (1)(b)(iii); ~~or (1)(e)(iii)~~ from the partner, shareholder, member, or other owner on whose behalf the payment was made.

~~(6)(5)~~ Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection ~~(1)(a)(iii)~~ for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

~~(7)(6)~~ Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

Section 31. Section 15-30-1121, MCA, is amended to read:

1 **"15-30-1121. Small business option unavailable on dissolution -- exception.** In the case of
2 corporation dissolution, ~~no~~ benefits may not be taken under the "small business act" or under any law or
3 regulation shifting the tax to be paid from the corporation to the shareholders ~~unless all shareholders agree to~~
4 ~~assume personal income tax liability the same as they would bear if they were residents of this state."~~

5
6 **Section 32.** Section 15-31-102, MCA, is amended to read:

7 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
8 as provided in subsection (3), there may not be taxed under this title any income received by any:

9 (a) labor, agricultural, or horticultural organization;

10 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
11 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the
12 payment of life, sick, accident, or other benefits to the members of the society, order, or association or their
13 dependents;

14 (c) cemetery company owned and operated exclusively for the benefit of its members;

15 (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or
16 educational purposes, no part of the net income of which inures to the benefit of any private stockholder or
17 individual;

18 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net
19 income of which inures to the benefit of any private stockholder or individual;

20 (f) civic league or organization not organized for profit but operated exclusively for the promotion of
21 social welfare;

22 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes,
23 no part of the net income of which inures to the benefit of any private stockholder or members;

24 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company,
25 mutual or cooperative telephone company, or similar organization of a purely local character, the income of
26 which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting
27 its expenses;

28 (i) cooperative association or corporation engaged in the business of operating a rural electrification
29 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

30 (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting

1 income from the property, and turning over the entire amount of the income, less expenses, to an organization
2 that itself is exempt from the tax imposed by this title;

3 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
4 organized to market association members' wool and sheep, the income of which consists solely of assessments,
5 dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose,
6 does not include expenses and money distributed to members contributing wool and sheep.

7 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions
8 of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire
9 ~~taxable tax~~ year a valid election under federal law to be treated as a DISC. ~~If a corporation makes that election~~
10 ~~under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under~~
11 ~~Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for~~
12 ~~all periods for which the election is effective.~~

13 (m) farmers' market association not organized for profit, no part of the net income of which inures to the
14 benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown
15 vegetables, handicrafts, and other products either grown or manufactured by the seller;

16 (n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a);

17 (o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.

18 (2) In determining the license fee to be paid under this part, there may not be included any earnings
19 derived from any public utility managed or operated by any subdivision of the state or from the exercise of any
20 governmental function.

21 (3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code,
22 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income
23 tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt
24 corporation subject to taxation on unrelated business income under this section shall file a copy of its federal
25 exempt organization business income tax return on which it reports its unrelated business income with the
26 department of revenue."

27
28 **Section 33.** Section 15-31-113, MCA, is amended to read:

29 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized
30 in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana corporate income or license tax under ~~Title 15, this chapter 30 or chapter 31, as appropriate,~~ on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the ~~taxable~~ tax year."

Section 34. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

(2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by the employer during the tax year, but the credit may not exceed \$1,575 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

(4) An amount paid or incurred during the tax year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, 26 U.S.C. 129(c)(1) or (c)(2).

(5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(7) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). ~~For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.~~

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular

1 year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any
2 credit remaining unused in the next succeeding tax year may be carried forward and used in the second
3 succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first
4 allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

5 (9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26
6 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the
7 corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of
8 the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the
9 corporation as otherwise provided by law.

10 (10) For purposes of the credit allowed under subsection (1) or (3):

11 (a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C.
12 129(e), apply to the extent applicable; and

13 (b) "employer" means an employer carrying on a business, trade, occupation, or profession in this
14 state."

15
16 **Section 35.** Section 15-31-150, MCA, is amended to read:

17 **"15-31-150. Credit for research expenses and research payments.** (1) (a) There is a credit against
18 taxes otherwise due under this chapter for increases in qualified research expense and basic research payments
19 for research conducted in Montana. Except as provided in this section, the credit must be determined in
20 accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996,
21 or as subsequently amended.

22 (b) For purposes of the credit, the:

23 (i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

24 (ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

25 (iii) special rules in 26 U.S.C. 41(g) do not apply; and

26 (iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

27 (2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter
28 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

29 (3) The credit allowed under this section may be used as a carryback against taxes imposed under
30 chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by

chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, ~~an individual~~, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

1 **Section 36.** Section 15-31-161, MCA, is amended to read:

2 **"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment.** A

3 corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due

4 under 15-31-101 for charitable contributions made to a qualified endowment, as defined in ~~15-30-165~~ 15-1-101.

5 The maximum credit that may be claimed by a corporation for contributions made from all sources in a year

6 under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's

7 income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer

8 has included the full amount of the contribution upon which the amount of the credit was computed as a

9 deduction under 15-31-114. ~~There is no A~~ carryback or carryforward of the credit is not permitted under this

10 section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December

11 31, 2007--sec. 5, Ch. 226, L. 2001.)"

12
13 **Section 37.** Section 15-31-162, MCA, is amended to read:

14 **"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company**

15 **credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in

16 ~~15-30-165~~ 15-1-101, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited

17 liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be

18 allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity

19 qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or

20 members or managers of a limited liability company in the same proportion used to report the corporation's,

21 partnership's, or limited liability company's income or loss for ~~Montana~~ federal income tax purposes. The credit

22 allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of

23 the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. The

24 maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or

25 manager of a limited liability company may claim in a year is \$10,000, ~~subject to the limitations in 15-30-166(2).~~

26 The credit allowed under this section may not exceed the taxpayer's income tax liability. ~~There is no A~~ carryback

27 or carryforward of the credit is not permitted under this section, and the credit must be applied to the tax year

28 in which the contribution is made. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

29
30 **Section 38.** Section 15-32-104, MCA, is amended to read:

1 **"15-32-104. Limitations on deduction and credit.** Tax treatment under 15-32-103 ~~and 15-32-109~~ is
2 limited to persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel
3 extraction or conventional hydroelectric development."
4

5 **Section 39.** Section 15-32-106, MCA, is amended to read:

6 **"15-32-106. Procedure for obtaining benefit of deduction or credit.** ~~The department of revenue shall~~
7 ~~provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall~~
8 ~~approve a deduction or credit under 15-32-103 or 15-32-109 that demonstrably promotes energy conservation~~
9 ~~or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction~~
10 ~~or credit involving energy generation to the department of environmental quality for its advice, and the~~
11 ~~department of environmental quality shall respond within 60 days. The department of revenue may refer a~~
12 ~~deduction or credit involving energy conservation to the department of labor and industry for its advice, and the~~
13 ~~department of labor and industry shall respond within 60 days. The department of revenue may deny a deduction~~
14 ~~or credit that it finds to be impractical or ineffective."~~
15

16 **Section 40.** Section 15-32-303, MCA, is amended to read:

17 **"15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer.** In
18 addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income~~
19 ~~under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15,~~
20 chapter 31, part 1, a taxpayer may deduct expenditures for organic fertilizer and inorganic fertilizer produced as
21 a byproduct produced in Montana and used in Montana if the expenditure was not otherwise deducted in
22 computing taxable income."
23

24 **Section 41.** Section 15-32-402, MCA, is amended to read:

25 **"15-32-402. Commercial or net metering system investment credit -- alternative energy systems.**
26 (1) ~~An individual, A~~ corporation, partnership, or small business corporation as defined in 15-30-1101 that makes
27 an investment of \$5,000 or more in property that is depreciable under the Internal Revenue Code for a
28 commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that
29 generates energy by means of an alternative renewable energy source, as defined in 15-6-225, is entitled to a
30 tax credit against taxes imposed by ~~15-30-103 or~~ 15-31-121 in an amount equal to 35% of the eligible costs, to

1 be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the
2 following:

- 3 (a) manufacturing plants located in Montana that produce alternative energy generating equipment;
4 (b) a new business facility or the expanded portion of an existing business facility for which the
5 alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed;
6 or
7 (c) the alternative energy generating equipment in which the investment for which a credit is being
8 claimed was made.

9 (2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1),
10 eligible costs include only those expenditures that are associated with the purchase, installation, or upgrading
11 of:

- 12 (a) generating equipment;
13 (b) safety devices and storage components;
14 (c) transmission lines necessary to connect with existing transmission facilities; and
15 (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other
16 transmission facilities are available.

17 (3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the
18 state or federal government for the system."
19

20 **Section 42.** Section 15-32-403, MCA, is amended to read:

21 **"15-32-403. (Temporary) Limitation on credit.** (1) Except as provided in subsection (2), whenever
22 any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed
23 or allowable under section 48(a) of the Internal Revenue Code, {26 U.S.C. 48(a)}, or any other federal law, the
24 state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit
25 does not exceed 60% of the eligible costs.

26 (2) ~~An individual,~~ A corporation, partnership, or small business corporation, as defined in 15-30-1101,
27 is exempt from the provisions of subsection (1) of this section if the ~~individual,~~ corporation, partnership, or small
28 business corporation:

- 29 (a) (i) invests in a commercial system located within the exterior boundaries of a Montana Indian
30 reservation, which commercial system is 5 megawatts or larger in size;

(ii) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system; and

(iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a reasonable rate of return as designated by the public service commission to customers for use within the state of Montana; or

(b) (i) invests in a commercial system located on state trust land;

(ii) signs a lease agreement with the state to make annual lease payments to the permanent school trust fund; and

(iii) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a rate of return not to exceed 12%.

(3) The cost of production must be determined by dividing the cost and operation of the commercial system over an appropriate time period by the kilowatt-hour output of the system. (Repealed effective July 1, 2005--secs. 4, 5(2), Ch. 609, L. 2003.)"

Section 43. Section 15-32-404, MCA, is amended to read:

"15-32-404. (Temporary) Carryover of credit. (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if ~~an individual~~, a corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, ~~which~~ and the commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial

1 system would be constructed regarding the training and employment of tribal members in the construction,
2 operation, and maintenance of the commercial system.

3 **15-32-404. (Effective July 1, 2005) Carryover of credit.** (1) The tax credit allowed under 15-32-402
4 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in
5 which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the
6 taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit
7 against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit
8 has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried
9 beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

10 (2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment
11 was placed in service if ~~an individual,~~ a corporation, partnership, or small business corporation, as defined in
12 15-30-1101:

13 (a) invests in a commercial system located within the exterior boundaries of a Montana Indian
14 reservation, ~~which~~ and the commercial system is 5 megawatts or larger in size; and

15 (b) signs an employment agreement with the tribal government of the reservation where the commercial
16 system would be constructed regarding the training and employment of tribal members in the construction,
17 operation, and maintenance of the commercial system."
18

19 **Section 44.** Section 15-32-502, MCA, is amended to read:

20 **"15-32-502. Definitions.** For purposes of this part, the following definitions apply:

21 (1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration
22 activity conducted at a specific exploration site for the purpose of determining the existence, location, extent,
23 or quality of a mineral or coal deposit. The term includes:

24 (i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity
25 referred to in 15-32-503;

26 (ii) direct labor costs and the cost of benefits for employees directly associated with work described in
27 15-32-503;

28 (iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and
29 taking the credit;

30 (iv) the reasonable costs of owning, maintaining, and operating equipment;

(v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through (1)(a)(vii);

(vi) payments to consultants and independent contractors; or

(vii) the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in 15-32-503.

(b) The term does not include return on investment, insurance or bond premiums not covered under subsection (1)(a)(v), or any other expense that the person has not incurred to complete work described in 15-32-503.

(2) "Credit" means the exploration incentive credit for activities involving mineral and coal deposits authorized by this part.

(3) "Exploration activity data list" means, as applicable, a summary of work completed during the year that includes but is not limited to:

(a) the number of core or rotary drilling holes completed;

(b) chemical analytical data available; or

(c) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken.

(4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil, rock, water, air, vegetation, and similar samples and their chemical analyses.

(5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements.

(6) "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by 82-1-111.

(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit interest and may be composed of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines, transportation equipment, and mining techniques and technology and may also consider the extent to which the mineral deposit interest comprises a common mining property.

(8) "Person" means a ~~sole proprietorship~~, corporation, partnership, small business corporation as defined in 15-30-1101, or limited liability company as defined in 35-8-102.

(9) "Tax year" means the calendar year."

Section 45. Section 15-32-503, MCA, is amended to read:

"15-32-503. Exploration incentive credit. (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter 30 or 31, for the certified expenditures of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

- (a) surveying by geophysical or geochemical methods;
- (b) drilling exploration holes;
- (c) conducting underground exploration;
- (d) surface trenching and bulk sampling; or
- (e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

- (i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;
- (ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and
- (iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date" means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect."

Section 46. Section 15-32-505, MCA, is amended to read:

"15-32-505. Application of credit. (1) In a tax year, a person may take a credit that was approved under 15-32-504 against taxes payable by the person. The credit may not exceed 50% of the person's tax liability under either Title 15, chapter 30 or 31, for the tax year that is related to production from the mining operation at which the exploration activities occurred.

(2) If a person applies the credit against the person's tax liability under subsection (1), the department shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's exploration activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of exploration activities required by this subsection must be made on a form prescribed by the department. On the form, the person shall:

(a) identify the mining operations for which the credit is claimed; and

(b) set out the gross income attributable to the mining operations and other information about the mining operations that the department may require.

(3) A person may not apply the credit under this section if the application, when added to credits

1 previously applied under this section, would exceed the total amount of the credits approved under 15-32-504."

2
3 **Section 47.** Section 15-32-510, MCA, is amended to read:

4 **"15-32-510. Deduction for donation of exploration information.** (1) In addition to all other deductions
5 ~~from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~
6 gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may
7 deduct documented expenses for the donation of mineral exploration information generated as part of the
8 certified expenditures. The information must be donated to the Montana tech foundation to reside as part of the
9 Montana tech research library, and the documented expenses must be based on the cost of recreating the
10 donated information.

11 (2) The Montana tech foundation has the right to limit information accepted and deductions granted to
12 that exploration activity data that is needed as part of the Montana tech research library.

13 (3) A deduction under this section may not exceed 20% of the actual value of the data if a tax credit for
14 the same exploration activity data is taken under this part."
15

16 **Section 48.** Section 15-32-602, MCA, is amended to read:

17 **"15-32-602. (Temporary) Amount and duration of credit -- how claimed.** (1) ~~An individual, A~~
18 corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against
19 taxes imposed by Title 15, chapter ~~30 or~~ 31, for investments in depreciable property to collect or process
20 reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under
21 15-32-603.

22 (2) Subject to subsection (4), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a
23 credit, as provided in subsection (3), for the cost of each item of property purchased to collect or process
24 reclaimable material or to manufacture a product from reclaimed material only in the year in which the property
25 was purchased.

26 (3) The amount of the credit that may be claimed under this section for investments in depreciable
27 property is determined according to the following schedule:

28 (a) 25% of the cost of the property on the first \$250,000 invested;

29 (b) 15% of the cost of the property on the next \$250,000 invested; and

30 (c) 5% of the cost of the property on the next \$500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of \$1 million.
(Terminates December 31, 2005--secs. 5, 7, Ch. 398, L. 2001.)"

Section 49. Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. In addition to all other deductions from ~~adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from~~ gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as a business-related expense in Montana.
(Terminates December 31, 2005--secs. 5, 7, Ch. 398, L. 2001.)"

Section 50. Section 15-33-106, MCA, is amended to read:

"15-33-106. Capital gains -- dividends exempted. Any capital gains or dividend income realized by ~~an individual or a corporation from an investment in an SBIC organized in accordance with this part is exempt~~ from taxation under the provisions of Title 15, ~~chapters 30 and~~ chapter 31."

Section 51. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes -- credit for personal property taxes and certain fees. (1)
The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license or income tax provided for in Title 15, chapter 31 ~~of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.~~

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the ~~income tax or corporation license or~~ income tax credit."

1

2 **Section 52.** Section 15-61-204, MCA, is amended to read:

3 **"15-61-204. Administration of account.** (1) (a) An account administrator shall administer the medical
4 care savings account from which the payment of claims is made and, except as provided in subsection (1)(b),
5 has a fiduciary duty to the person for whose benefit the account is administered.

6 (b) Except for reporting and remitting of penalties to the department of revenue, a financial institution
7 shall administer a medical savings account as a regular deposit or share account and has the same rights and
8 duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other
9 provision of this chapter, a financial institution is not responsible for determining whether a medical expense is
10 eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals
11 are for eligible and nonreimbursable medical expenses.

12 (2) Not more than 30 days after an account administrator begins to administer an account, the account
13 administrator shall notify in writing each employee and account holder on whose behalf the account administrator
14 administers an account of the date of the last business day of the account administrator's business year.

15 (3) An account administrator may use funds held in a medical care savings account only for the purpose
16 of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's
17 dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the
18 employee or account holder or a dependent of the employee or account holder, or paying the expenses of
19 administering the account. Funds held in a medical care savings account may not be used to pay medical
20 expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent
21 of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant
22 to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another
23 health coverage policy, certificate, or contract.

24 (4) The employee or account holder may submit documentation of eligible medical expenses paid by
25 the employee or account holder or a dependent of the employee or account holder in the tax year to the account
26 administrator, and the account administrator shall reimburse the employee or account holder from the
27 employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal
28 from a medical savings account was made for an eligible medical expense is upon the account holder and not
29 upon the account administrator or the employer of the account holder.

30 (5) The employee or account holder may submit documentation of the purchase of long-term care

1 insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or
2 account holder to the account administrator, and the account administrator shall reimburse the employee or
3 account holder from the employee's or account holder's account for payments made for the purchase of the
4 insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from
5 the account for the payment of long-term care insurance premiums or an annuity.

6 (6) If an employer makes contributions to a medical care savings account on a periodic installment
7 basis, the employer may advance to an employee, interest free, an amount necessary to cover medical
8 expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the
9 expense is incurred if the employee agrees to repay the advance from future installments or when the employee
10 ceases employment with the employer.

11 (7) In the case of an account administrator who is also the account holder or an employee:

12 (a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

13 (b) the account administrator may not use funds held in an account to pay expenses of administering
14 the account, except that a service fee may be deducted from the account by a financial institution or other holder
15 of the account;

16 (c) documentation of eligible medical expenses must be maintained but is not required to be submitted
17 to the account administrator;

18 (d) contributions to a medical savings account must be established in a separate account and be
19 segregated from other funds;

20 (e) the account holder is subject to the same yearend reporting requirements as all other account
21 administrators; and

22 (f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical
23 expenses to the state.

24 (8) Within 30 days of being furnished proof of the death of the employee or account holder, the account
25 administrator shall distribute the principal and accumulated interest or other income in the account to the estate
26 of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."
27

28 **Section 53.** Section 15-62-208, MCA, is amended to read:

29 **"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax
30 at a rate equal to the highest rate of tax provided in 15-30-103, as that section read on December 31, 2005, on

1 the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8), as that section
2 read on December 31, 2002.

3 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross
4 income, all withdrawals must be allocated between income and contributions in accordance with the principles
5 applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion
6 of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions,
7 if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions
8 that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must
9 be treated as first derived from contributions that reduced adjusted gross income, to the extent of the
10 contributions, and then to contributions that did not reduce adjusted gross income.

11 (3) ~~(a)~~ The recapture tax imposed by this section is payable by the owner of the account from which the
12 withdrawal or contribution was made. The tax liability must be reported on ~~the income tax return of the account~~
13 owner forms provided by the department and is payable ~~with the income tax payment for~~ on or before December
14 31 of the year of the withdrawal or at the time that an income tax payment would be due for the year of the
15 ~~withdrawal~~. The account owner is liable for the tax even if the account owner is not a Montana resident at the
16 time of the withdrawal.

17 ~~(b) The department may require withholding on recapturable withdrawals from an account that was at~~
18 ~~one time owned by a Montana resident if the account owner is not a Montana resident at the time of the~~
19 ~~withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time~~
20 ~~owned by a Montana resident must be treated as if the account is owned by a resident of Montana.~~

21 (4) For the purposes of this section, all contributions made to accounts by residents of Montana are
22 presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that
23 all or a portion of the contributions did not reduce adjusted gross income. ~~Contributors who claim deductions~~
24 ~~for contributions shall report on their Montana income tax returns the amount of deductible contributions made~~
25 ~~to accounts for each designated beneficiary and the social security number of each designated beneficiary.~~

26 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
27 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

28 (a) April 30, 2001; or

29 (b) the date that is 3 years prior to the date of the withdrawal or distribution.

30 (6) The department shall use all means available for the ~~administration and enforcement of income tax~~

laws in the administration and enforcement of this section."

Section 54. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption -- conditions Contributions -- limits -- administration. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

—— (2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to \$3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to \$6,000.

(c)(1) (a) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d)(b) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

—— (4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

(5)(2) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section is allowed. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this

1 section. ~~The person other than the account holder who transfers money to the account is not entitled to the tax~~
2 ~~exemption under this section.~~

3 ~~(6)(3)~~ The account holder who establishes the account, individually or jointly, is the owner of the
4 account. An account holder may withdraw money in an account and deposit the money in another account with
5 a different account administrator or with the same account administrator ~~without incurring tax liability.~~

6 ~~(7)(4)~~ The account holder shall use the money in the account for the eligible costs related to the
7 purchase of a single-family residence within 10 years following the year in which the account was established.
8 ~~Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family~~
9 ~~residence or any principal or income remaining in the account on December 31 of the last year of the 10-year~~
10 ~~period must be taxed as ordinary income.~~

11 ~~(8)~~ ~~The amount of a disbursement of any assets of a first-time home buyer savings account pursuant~~
12 ~~to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account~~
13 ~~holder does not subject the account holder to tax liability.~~

14 ~~(9)(5)~~ Within 30 days of being furnished proof of the death of the account holder, the account
15 administrator shall distribute the principal and accumulated interest or other income in the account to the estate
16 of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

17
18 **Section 55.** Section 15-68-101, MCA, is amended to read:

19 **"15-68-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the
20 following definitions apply:

21 (1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites
22 that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

23 (b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort,
24 dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

25 (c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a
26 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for
27 camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average
28 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under
29 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented
30 solely on a monthly basis or for a period of 30 days or more.

~~(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.~~

~~———— (b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.~~

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement provided for under [sections 90 through 97].

(3) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 1/2 of 1% or more of alcohol by volume.

~~(3)~~(4) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

~~(4)~~(5) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(6) (a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.

(b) The term does not include any preparation that contains flour and that requires refrigeration.

(7) "Certified automated system" has the meaning provided in [section 91].

(8) "Certified service provider" has the meaning provided in [section 91].

1 (9) "Computer" means an electronic device that accepts information in a digital or similar form and
2 manipulates it for a result based on a sequence of instructions.

3 (10) "Computer software" means a set of coded instructions designed to cause a computer or automatic
4 data processing equipment to perform a task.

5 (11) "Delivery charges" means charges by the seller of personal property or services for preparation
6 and delivery to a location designated by the purchaser of personal property or services, including but not limited
7 to transportation, shipping, postage, handling, crating, and packing.

8 (12) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

9 (a) contains one or more of the following dietary ingredients:

10 (i) a vitamin;

11 (ii) a mineral;

12 (iii) an herb or other botanical;

13 (iv) an amino acid;

14 (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

15 or

16 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in
17 subsections (12)(a)(i) through (12)(a)(v);

18 (b) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended
19 for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole
20 item of a meal or of the diet; and

21 (c) is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found
22 on the label and as required pursuant to 21 CFR 101.36.

23 (13) "Drug" means a compound, substance, or preparation and any component of a compound,
24 substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

25 (a) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
26 United States, or official National Formulary and any supplement to them;

27 (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

28 (c) intended to affect the structure or any function of the body.

29 (14) (a) "Durable medical equipment" means equipment, including repair and replacement parts for
30 equipment, that:

1 (i) can withstand repeated use;

2 (ii) is primarily and customarily used to serve a medical purpose;

3 (iii) generally is not useful to a person in the absence of illness or injury; and

4 (iv) is not worn in or on the body.

5 (b) The term does not include mobility-enhancing equipment.

6 (15) "Electronic" means technology that relates to having electrical, digital, magnetic, wireless, optical,
7 electromagnetic, or similar capabilities.

8 ~~(5)(16)~~ "Engaging in business" means carrying on or causing to be carried on any activity with the
9 purpose of receiving direct or indirect benefit.

10 (17) (a) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen,
11 dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste
12 or nutritional value.

13 (b) The term does not include alcoholic beverages, candy, dietary supplements, soft drinks, or tobacco.

14 (18) "Food sold through vending machines" means food dispensed from a machine or other mechanical
15 device that accepts payment.

16 (19) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste,
17 mouthwash, antiperspirants, and suntan lotions and sunscreens, regardless of whether the items meet the
18 definition of over-the-counter drugs.

19 ~~(6)(20)~~ (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible
20 personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options
21 to purchase or extend.

22 (b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of
23 consideration may be increased or decreased by reference to the amount realized upon sale or disposition of
24 the property, as defined in 26 U.S.C. 7701(h)(1).

25 (c) The term does not include:

26 (i) a transfer of possession or control of property under a security agreement or deferred payment plan
27 that requires the transfer of title upon completion of the required payments;

28 (ii) a transfer of possession or control of property under an agreement that requires the transfer of title
29 upon completion of required payments and payment of an option price that does not exceed the greater of \$100
30 or 1% of the total required payments; or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(21) "Maintaining an office or other place of business" means:

(a) a person having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or place of business; or

(b) an agent operating within this state under the authority of the person or its subsidiary, whether the place of business or agent is located within the state permanently or temporarily or whether or not the person or its subsidiary is authorized to do business within this state.

(22) (a) "Manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business.

(b) The term does not include construction.

(23) (a) "Mobility-enhancing equipment" means equipment, including repair and replacement parts, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or in a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(b) The term does not include durable medical equipment.

~~(7)~~(24) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(25) (a) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66.

(b) An over-the-counter drug label includes:

(i) a drug facts panel; or

(ii) a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(c) The term does not include grooming and hygiene products.

~~(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.~~

~~(9)(26)~~ "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(27) (a) "Prepared food" means:

(i) food sold in a heated state or heated by the seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(b) The term does not include food that is only cut, repackaged, or pasteurized by the seller and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the United States food and drug administration in chapter 3, part 401.11, of its Food Code, so as to prevent food-borne illnesses.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner as authorized by the laws of Montana.

(29) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct a physical deformity or malfunction; or

1 (c) support a weak or deformed portion of the body.

2 ~~(10)(30)~~ "Purchaser" means a person to whom a sale of personal property is made or to whom a service
3 is furnished.

4 (31) "Registration" or "seller's registration" means a seller's registration as described in 15-68-401.

5 ~~(11)(32)~~ "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of
6 the motor vehicle through an arrangement and for consideration.

7 ~~(12)(33)~~ "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease,
8 or subrent.

9 ~~(13)(34)~~ "Sale" or "selling" means the transfer of property for consideration or the performance of a
10 service for consideration.

11 ~~(14)(35)~~ (a) "Sales price" applies to the measure subject to sales tax and means the total amount or
12 consideration, including cash, credit, property, and services, for which personal property or services are sold,
13 leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the
14 following:

15 (i) the seller's cost of the property sold;

16 (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the
17 seller, all taxes imposed on the seller, and any other expense of the seller;

18 (iii) charges by the seller for any services necessary to complete the sale, other than delivery and
19 installation charges;

20 (iv) delivery charges;

21 (v) installation charges;

22 (vi) the value of exempt personal property given to the purchaser when taxable and exempt personal
23 property have been bundled together and sold by the seller as a single product or piece of merchandise; and

24 (vii) credit for any trade-in.

25 (b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (35)(a)(iii) through ~~(14)(a)(vii)~~
26 (35)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar
27 document given to the purchaser.

28 (c) The term does not include:

29 (i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed
30 by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

~~(15)(36)~~ "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

~~(16)(37)~~ "Seller" means a person that makes sales, leases, or rentals of personal property or services.

~~(17)(38)~~ (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(39) (a) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

(b) The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

(40) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and computer software.

(41) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

~~(18)(42)~~ "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business."

Section 56. Section 15-68-102, MCA, is amended to read:

1 **"15-68-102. Imposition and rate of sales tax and use tax -- exceptions.** (1) A sales tax of the
2 following percentages is imposed on sales of the following property or services:

3 (a) 4% on all sales of services and tangible personal property;

4 ~~(a)~~(b) 3% on accommodations and campgrounds;

5 ~~(b)~~(c) 4% on the base rental charge for rental vehicles.

6 (2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the
7 department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be
8 applied to the sales price.

9 (3) (a) For the privilege of using property or services within this state, there is imposed on the person
10 using the following property or services a use tax equal to the following percentages of the value of the property
11 or services:

12 (i) 4% on all sales of services and tangible personal property;

13 ~~(i)~~(ii) 3% on accommodations and campgrounds;

14 ~~(ii)~~(iii) 4% on the base rental charge for rental vehicles.

15 (b) The use tax is imposed on property or services that were:

16 (i) acquired outside this state as the result of a transaction that would have been subject to the sales
17 tax had it occurred within this state;

18 (ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a
19 transaction that would have been subject to the sales tax had it occurred outside the exterior boundaries of an
20 Indian reservation within this state;

21 (iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by
22 subsection (1) or the use tax imposed by subsection (3)(a) but which transaction, because of the buyer's
23 subsequent use of the property, is subject to the sales tax or use tax; or

24 (iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that
25 because of the buyer's subsequent use of the services is subject to the sales tax or use tax.

26 (4) For purposes of this section, the value of property must be determined as of the time of acquisition,
27 introduction into this state, or conversion to use, whichever is latest.

28 (5) The sale of property or services exempt or nontaxable under this chapter is exempt from the tax
29 imposed in subsections (1) and (3).

30 ~~(6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and~~

~~(3)(a)(i) until October 1, 2003, for contracts entered into prior to April 30, 2003, that provide for a guaranteed charge for accommodations or campgrounds."~~

NEW SECTION. Section 57. Credit -- out-of-state taxes. If a sales tax, use tax, or similar tax has been levied by another state or a political subdivision of another state on property that was bought outside this state but that will be used or consumed within this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

Section 58. Section 15-68-110, MCA, is amended to read:

"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) ~~A~~ Except when the purchaser has a direct payment permit as provided in [section 59], a person engaging in the business of selling property or services subject to taxation under this chapter shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) (a) A person that solicits or exploits the consumer market within this state by regularly and systematically performing an activity within this state and whose sales are not subject to the sales tax shall collect the use tax from the purchaser and pay the use tax collected to the department.

(b) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following within this state:

(i) maintaining an office or other place of business that solicits orders through employees or independent contractors;

(ii) canvassing;

(iii) demonstrating;

(iv) collecting money;

(v) warehousing or storing merchandise;

(vi) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers;

(vii) to the extent permitted by federal law, soliciting orders for property by means of telecommunications or a television shopping system or by providing telecommunications services that use toll or toll-free numbers and that are intended to be broadcast by cable television or other means to consumers within this state;

1 (viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for
2 property by means of advertising disseminated primarily to consumers located within this state and only
3 secondarily to bordering jurisdictions;

4 (ix) soliciting orders for property by mail through the distribution of catalogs, periodicals, advertising
5 flyers, or other advertising;

6 (x) soliciting orders, pursuant to a contract with a cable television operator located within this state, for
7 tangible personal property by means of advertising transmitted or distributed over a cable television system
8 within this state; or

9 (xi) participating in an act that benefits from banking, financing, debt collection, telecommunications, or
10 marketing activities occurring within this state or that benefits from the location within this state of authorized
11 installation, servicing, or repair facilities.

12 (3) Multistate registration pursuant to the agreement may not be used as a factor to determine whether
13 the person is conducting an activity within the state subjecting the person to the sales tax or use tax.

14 ~~(2)~~(4) A person engaging in business within this state shall, before making any sales subject to this
15 chapter, ~~obtain a seller's permit~~ register as a seller, as provided in 15-68-401, and at the time of making a sale,
16 whether within or outside the state, collect the sales tax imposed by 15-68-102 from the purchaser and give to
17 the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

18 ~~(3)~~(5) The department may authorize the collection of the sales tax imposed by 15-68-102 by any
19 retailer who does not maintain a place of business within this state but who, to the satisfaction of the department,
20 is in compliance with the law. When authorized, the person shall collect the use tax upon all property and
21 services that, to the person's knowledge, are for use within this state and subject to taxation under this chapter.

22 ~~(4)~~(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any
23 person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and
24 use tax.

25 ~~(5)~~(7) A person engaging in business within this state that is subject to this chapter shall provide to the
26 department:

27 (a) the names and addresses of all of the person's agents operating within this state; and

28 (b) the location of each of the person's distribution houses or offices, sales houses or offices, and other
29 places of business within this state.

30 ~~(6)~~(8) If any application of this section is held invalid, the application to other situations or persons is

not affected."

NEW SECTION. Section 59. Direct payment of sales tax -- direct payment permits. (1) The department may issue direct payment permits to any person liable for the payment of more than \$500 a year in sales tax. A person shall apply to the department for a permit, on forms approved by the department. By applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to pay any sales tax due under this chapter made by the applicant as a direct payment permitholder. A direct payment permit may be revoked by the department at any time upon 90 days' written notice to the permitholder. A permitholder may be audited by the department.

(2) A direct payment permitholder shall pay any sales tax authorized under this chapter directly to the department. The permitholder must receive a nontaxable transaction certificate, as provided in 15-68-202, using the direct payment permit as a basis for the exemption.

Section 60. Section 15-68-201, MCA, is amended to read:

"15-68-201. Nontaxable transaction certificate -- requirements. (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time that a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit registration is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable. If an incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser is subject to the penalty provided in 15-68-410."

Section 61. Section 15-68-202, MCA, is amended to read:

"15-68-202. Nontaxable transaction certificate -- form. (1) The department shall provide for a uniform nontaxable transaction certificate. An electronic or digitally usable version of a nontaxable transaction certificate

1 ~~may also be provided.~~ A purchaser shall use the certificate when purchasing goods or services for resale or for
2 other nontaxable transactions.

3 (2) At a minimum, the certificate must provide:

4 (a) ~~the a unique identification number of the seller's permit issued to the purchaser as provided in~~
5 ~~15-68-404;~~

6 (b) ~~the general character of property or service sold by the purchaser in the regular course of business;~~
7 ~~nature of the exemption, such as the fact that:~~

8 ~~(e)(i)~~ the property or service is purchased for resale;

9 (ii) the property or service is purchased for manufacturing;

10 (iii) the purchaser is authorized to make direct payments; or

11 (iv) the purchaser is an entity exempt from payment of sales tax;

12 ~~(d)(c)~~ the name and address of the purchaser; and

13 ~~(e)(d)~~ if it is a paper certificate, a signature line for the purchaser.

14 (3) The department shall adopt rules to provide procedures for application for and provision of a
15 certificate to a person engaging in business within this state ~~for renting accommodations and campgrounds prior~~
16 ~~to June 1, 2003; [the applicability date of this section] and renting vehicles prior to July 1, 2003.~~ The rules
17 adopted by the department must ensure that each person that is engaging in business within this state ~~for renting~~
18 ~~accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the~~
19 ~~applicability date of this section]; and~~ that has applied in a timely fashion is issued a certificate ~~for renting~~
20 ~~accommodations and campgrounds prior to June 1, 2003, and renting vehicles prior to July 1, 2003 [the~~
21 ~~applicability date of this section]."~~

22
23 **NEW SECTION. Section 62. Exempt services.** (1) The following services enumerated in the North
24 American Industry Classification System Manual (NAICS), 1997, as prepared by the United States office of
25 management and budget, office of the president, are exempt from taxation:

26 (a) health services (NAICS sector 62);

27 (b) educational services (NAICS sector 61), except all other schools and instruction (NAICS industry
28 61169);

29 (c) agriculture, forestry, and fishing and hunting services (sector 11), except fishing, hunting, and
30 trapping (NAICS subsector 114);

(e) transportation (NAICS sector 48), except:

(i) nonscheduled air transportation (NAICS group 4812);

(ii) truck transportation (NAICS subsector 484);

(iii) transit and ground transportation (NAICS subsection 485), other than urban transit systems (NAICS industry 48511) and school and employee bus transportation (NAICS group 4854);

(iv) pipeline transportation (NAICS subsector 486);

(v) scenic and sightseeing transportation (NAICS subsector (487);

(f) farm product warehousing and storage (NAICS industry 49313); and

(g) security brokerage (NAICS industry 52312).

(2) The following are also specifically exempt from the provisions of this chapter:

(a) services rendered by an employee for the employee's employer;

(b) commissions earned or service fees paid by an insurance company to an agent or representative for the sale of a policy;

(c) services provided by any corporation to another corporation that is centrally assessed and that has identical ownership and services provided by any corporation to a wholly owned subsidiary that is centrally assessed; and

(d) gambling that is regulated under Title 23, chapter 5.

(3) Sale of taxable tangible personal property remains taxable even if the sale occurs in the course of providing a nontaxable service or is made by a business that provides a nontaxable service.

Section 63. Section 15-68-206, MCA, is amended to read:

"15-68-206. Exemption -- government agencies -- utility services. (1) All sales by or uses by the United States or an agency or instrumentality of the United States or of this state, a political subdivision of this state, an Indian tribe, or a foreign government are exempt from the sales tax and use tax.

(2) The sale of natural gas, water, electricity, telecommunications services, refuse collection, or other utility services, whether or not provided by a government agency, are not subject to the sales tax and use tax."

NEW SECTION. Section 64. Exemption -- food products. (1) Except as provided in subsection (2), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

(2) The sale of prepared food and food sold through vending machines is taxable, but prepared food

1 offered or delivered as part of a residential living arrangement and consumed by an individual that is party to
2 the arrangement or by patients of a health care facility is exempt from the sales tax and use tax.

3
4 **NEW SECTION. Section 65. Exemption -- medicine, drugs, and certain devices.** The following are
5 exempt from the sales tax and use tax:

6 (1) prescription drugs, over-the-counter drugs, durable medical equipment, and mobility-enhancing
7 equipment; and

8 (2) insulin, oxygen, and therapeutic and prosthetic devices.

9
10 **NEW SECTION. Section 66. Exemption -- motor fuel.** (1) The sale and use of gasoline, ethanol
11 blended for fuel, and special fuel, including natural gas or propane, upon which tax has been paid or will be paid
12 under Title 15, chapter 70, are exempt from the sales tax and use tax.

13 (2) The sale and use of special fuel that is exempt from taxation under Title 15, chapter 70, part 3, are
14 exempt from the sales tax and use tax.

15
16 **NEW SECTION. Section 67. Exemption -- business equipment subject to property taxes.** (1)
17 Personal property subject to property taxes under 15-6-138 is exempt from the sales tax and use tax as long
18 as the tax rate under 15-6-138 is not zero.

19
20 **NEW SECTION. Section 68. Exemption -- insurance premiums.** The premiums of an insurance
21 company, a health service corporation, a health maintenance organization, or a fraternal benefit society or of
22 a producer of the company, corporation, organization, or society are exempt from the sales tax.

23
24 **NEW SECTION. Section 69. Exemption -- dividends and interest.** The following are exempt from
25 the sales tax:

26 (1) interest on money loaned or deposited;

27 (2) dividends or interest from stocks, bonds, or securities;

28 (3) proceeds from the sale of stocks, bonds, or securities; and

29 (4) commissions or fees derived from the business of buying, selling, or promoting any stock, bond, or
30 security.

Section 70. Section 15-68-207, MCA, is amended to read:

"15-68-207. Exemption -- isolated or occasional sale or lease of property. The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax. Occasional sales include sales that are occasional but not continuous and that are made for the purpose of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal organizations."

NEW SECTION. Section 71. Exemption -- personal effects. The use by an individual of personal or household effects brought into the state for the establishment by the individual of an initial residence within this state and the use of property brought into the state by a nonresident for the nonresident's own nonbusiness use while temporarily within this state are exempt from the use tax.

NEW SECTION. Section 72. Exemption -- feed -- fertilizers. The sale or use of the following when used in the course of an agricultural business is exempt from the sales tax and use tax:

- (1) feed for livestock;
- (2) semen, ova, and embryos used in animal husbandry;
- (3) seeds, roots, and bulbs;
- (4) soil conditioners and fertilizers;
- (5) insecticides, insects used to control weeds or the population of other insects, fungicides, weedicides, and herbicides; and
- (6) water for commercial irrigation.

NEW SECTION. Section 73. Exemption -- agricultural products -- livestock feeding. (1) (a) The sale of livestock, live poultry, unprocessed agricultural products, hides, or pelts by a grower, producer, trapper, or nonprofit marketing association is exempt from the sales tax.

(b) A person engaged in the business of buying and selling wool or mohair or of buying and selling livestock on the person's own account and without the services of a broker, auctioneer, or other agent is considered a producer for the purposes of subsection (1)(a).

(2) Sales from feeding, pasturing, penning, handling, or training livestock prior to sale are exempt from the sales tax.

NEW SECTION. Section 74. Exemption -- minerals -- exceptions. (1) The sale or lease of interests in minerals, as defined in 15-38-103, is exempt from the sales tax and use tax.

(2) Except as provided in subsections (5) and (6), the sale or use of a mineral, as defined in 15-38-103, is exempt from the sales tax and use tax.

(3) Minerals used by the producer of the minerals for purposes of exploring for, producing, or transporting minerals are exempt from the sales tax and use tax, except that the exemption does not include refined petroleum products.

(4) The sale or use of platinum and palladium, whenever refined and preserved in coins, ingots, bars, or other similar forms, is exempt from the sales tax and use tax.

(5) Minerals used as or integrated into jewelry, art, or sculpture or used as a decorative embellishment or adornment, either in their own right, in combination with other property, or after being refined, reduced, polished, cut, faceted, or otherwise processed, are not included in the exemption provided in this section.

(6) Minerals that are used for producing energy or that are used for conversion into energy are subject to the sales tax or use tax unless the energy is produced or converted for resale as a form of energy.

NEW SECTION. Section 75. Exemption -- certain chemicals, reagents, and substances. (1) The sale or use by a person of any chemical, reagent, or other substance that is normally used or consumed in the processing of ores or petroleum, in a mill, smelter, refinery, or reduction facility, or in acidizing oil wells is exempt from the sales tax and use tax.

(2) The sale or use of explosives, blasting material, or dynamite is not exempt from the sales tax and use tax.

NEW SECTION. Section 76. Nontaxability -- sale to miner or manufacturer. (1) The sale of property to a purchaser engaged in the business of mining or manufacturing is nontaxable if:

(a) the purchaser has a nontaxable transaction certificate; and

(b) (i) the purchaser incorporates the property as an ingredient or component part of the product in the business of mining or manufacturing; or

(ii) the purchaser uses the property to extract a mineral and the property is required to be abandoned in place, in accordance with state regulations, when production of the mineral from a mine or wellhead permanently ceases.

(2) For the purposes of this section, electrical energy or electricity used or consumed by electrolytic reduction used in the reduction or refinement of ores is considered a component part of the product.

NEW SECTION. Section 77. Nontaxability -- sale or lease of real property or improvements and lease of mobile homes. (1) (a) The sale or lease of real property or improvements is nontaxable.

(b) The lease or rental of a mobile home for a period of 1 month or more is nontaxable.

(2) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented dwelling, house, mobile home, cabin, condominium, or apartment is nontaxable.

NEW SECTION. Section 78. Nontaxability -- sale of certain services to out-of-state purchaser.

(1) Except as provided in subsection (3), sales of a service are not taxable if the sale is made to a purchaser that delivers to the seller either an exemption certificate or other evidence acceptable to the department that the transaction and the person that delivers the exemption certificate or other evidence acceptable to the department meet the conditions set out in subsection (2).

(2) Sales of a service are not taxable if the purchaser of the service, any of the purchaser's employees, or any person in privity with the purchaser:

(a) does not make initial use of the product or the service within this state;

(b) does not take delivery of the product or the service within this state; or

(c) concurrent with the performance of the service, does not have a regular place of work within this state or spend more than brief and occasional periods of time within this state and:

(i) does not have any communication within this state related in any way to the subject matter, performance, or administration of the service with the person performing the service; or

(ii) does not personally perform work within this state related to the subject matter of the service.

(3) Architectural, engineering, surveying, or graphic design services are nontaxable if the product resulting from the service or the service is used or applied exclusively outside of Montana. For the purposes of this subsection, the provisions of subsection (2) do not apply.

(4) Services that initially were nontaxable under this section but that no longer meet the criteria in

subsection (2) are nontaxable only for the period prior to the disqualification and are, after disqualification, taxable.

NEW SECTION. Section 79. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. The following are nontaxable:

(1) a transaction in interstate commerce to the extent that the imposition of the sales tax or use tax would be unlawful under the United States constitution;

(2) transmitting messages or conversations by radio when the transmissions originate from a point outside this state and are received at a point within this state; and

(3) the sale of radio or television broadcast time if the advertising message is supplied by or on behalf of a national or regional seller or an advertiser that does not have its principal place of business within this state or that is not incorporated under the laws of this state.

NEW SECTION. Section 80. Nontaxability -- sale of tangible personal property for leasing. The sale of tangible personal property, other than furniture or appliances, is nontaxable if:

(1) the sale is made to a purchaser that has a nontaxable transaction certificate;

(2) the purchaser is engaged in a business deriving more than 50% of its receipts from selling or leasing property of the type leased; and

(3) the purchaser does not use the property in any manner, other than holding it for sale or lease or selling or leasing it, either by itself or in combination with other property, in the ordinary course of business.

Section 81. Section 15-68-401, MCA, is amended to read:

"15-68-401. Seller's permit registration. (1) A person that wishes to engage in business within this state that is subject to this chapter shall ~~obtain~~ file with the department an application for a seller's permit registration before engaging in business within this state.

(2) Registration may be directly with the department or through the multistate central registration system as provided in the agreement. Sellers registered through the multistate central registration system agree to collect and remit sales taxes and use taxes for taxable Montana sales and comply with audit and compliance provisions established through the agreement.

~~(2)~~(3) Upon an applicant's compliance with this chapter, the department shall issue to the applicant a

1 separate, numbered seller's permit registration for each location in which the applicant maintains an office or
2 other place of business within Montana. A permit registration is valid until revoked or suspended but is not
3 assignable. A permit registration is valid only for the person in whose name it is issued and for the transaction
4 of business at the place designated. The permit registration must be conspicuously displayed at all times at the
5 place for which it is issued.

6 ~~(3)(4)~~ The department shall adopt rules to provide procedures for application for a seller's registration
7 and a provision of a seller's permit to a person for registering sellers engaging in business within this state that
8 is subject to this chapter ~~for renting accommodations and campgrounds prior to June 1, 2003, and renting~~
9 ~~vehicles prior to July 1, 2003~~ [the applicability date of this section]. The rules adopted by the department must
10 ensure that each person engaging in business within this state ~~for renting accommodations and campgrounds~~
11 ~~prior to June 1, 2003, and renting vehicles prior to July 1, 2003, [the applicability date of this section]~~ has the
12 opportunity to be registered ~~is issued a seller's permit for renting accommodations and campgrounds prior to~~
13 ~~June 1, 2003, and renting vehicles prior to July 1, 2003 [the applicability date of this section]~~. The department
14 may adopt rules providing for seasonal permits registration."

15
16 **Section 82.** Section 15-68-402, MCA, is amended to read:

17 **"15-68-402. ~~Permit application~~ Application for seller's registration -- requirements -- place of**
18 **business -- form.** (1) (a) A person that wishes to engage in the business of making retail sales or providing
19 services in Montana that are subject to this chapter shall file with the department an application for a permit
20 seller's registration. If the person has more than one location in which the person maintains an office or other
21 place of business, an application may include multiple locations.

22 (b) An applicant who does not maintain an office or other place of business and who moves from place
23 to place is considered to have only one place of business and shall attach the permit seller's registration to the
24 applicant's cart, stand, truck, or other merchandising device.

25 (c) A vending machine operator who has more than one vending machine location is considered to have
26 only one place of business for purposes of this section.

27 (2) Each person or class of persons required to file a return under this chapter, other than persons with
28 direct payment permits and certified service providers, is required to file an application for a permit seller's
29 registration.

30 (3) ~~Each~~ An application for a permit seller's registration ~~must~~ may be on a either in electronic or paper

1 form and must be prescribed by the department, and The application must meet the requirements of the
2 multistate central registration system under the agreement even if the applicant intends to make local retail sales
3 only in Montana. The form must set forth the name under which the applicant intends to transact business, the
4 location of the applicant's place or places of business, and other information that the department may require.
5 The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the
6 application if the owner is a corporation, partnership, limited liability company, or some other business entity."

7
8 **Section 83.** Section 15-68-405, MCA, is amended to read:

9 **"15-68-405. Revocation or suspension of permit seller's registration -- appeal.** (1) Subject to the
10 provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit seller's
11 registration held by a person that fails to comply with the provisions of this chapter.

12 (2) The department shall provide dispute resolution on a proposed revocation or suspension pursuant
13 to 15-1-211.

14 (3) If a permit seller's registration is revoked, the department may not issue a new permit registration
15 except upon application accompanied by reasonable evidence of the intention of the applicant to comply with
16 the provisions of this chapter. The department may require security in addition to that authorized by 15-68-512
17 in an amount reasonably necessary to ensure compliance with this chapter as a condition for the issuance of
18 a new permit registration to the applicant.

19 (4) A person aggrieved by the department's final decision to revoke a permit seller's registration, as
20 provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date
21 on which the department issued its final decision."

22
23 **Section 84.** Section 15-68-501, MCA, is amended to read:

24 **"15-68-501. Liability for payment of tax -- security for retailer without place of business -- penalty.**

25 (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the
26 department.

27 (2) A retailer that does not maintain an office or other place of business within this state is liable for the
28 sales tax or use tax in accordance with this chapter and may be required to furnish adequate security, as
29 provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise
30 provided in this chapter, the retailer is liable for the taxes upon all property sold and services provided in this

1 state in the same manner as a retailer who maintains an office or other place of business within this state. The
2 seller's permit registration provided for in 15-68-401 may be canceled at any time if the department considers
3 the security inadequate or believes that the taxes can be collected more effectively in another manner.

4 (3) An agent, canvasser, or employee of a retailer doing business within this state may not sell, solicit
5 orders for, or deliver any property or services within Montana unless the principal, employer, or retailer
6 possesses a seller's permit registration issued by the department. If an agent, canvasser, or employee violates
7 the provisions of this chapter, the person is subject to a fine of not more than \$100 for each separate transaction
8 or event."

9
10 **Section 85.** Section 15-68-502, MCA, is amended to read:

11 **"15-68-502. Returns -- payment -- authority of department.** (1) ~~Except as provided in subsection (2),~~
12 ~~on or before the last day of the month following the calendar quarter in which the transaction subject to the tax~~
13 ~~imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for~~
14 ~~the preceding quarter must be filed with the department. Each person engaged in business within this state or~~
15 ~~using property or services within this state that are subject to tax under this chapter shall file a return. A person~~
16 ~~making retail sales at two or more places of business shall file a separate return for each separate place of~~
17 ~~business. Sellers that are registered under the agreement and that use either a certified automated system or~~
18 ~~a certified service provider, as defined in the agreement in [section 91], are subject to the reporting and payment~~
19 ~~provisions of subsection (2) of this section. A person who has been issued a seasonal seller's registration shall~~
20 ~~file a return and pay the tax on the date or dates set by the department. All other sellers are subject to the~~
21 ~~reporting and payment provisions of subsection (3).~~

22 (2) (a) On or before the 20th day of each month, a return, in a form adopted by the department in
23 conformance with the agreement, with a remittance of the tax owed for the preceding month, must be filed with
24 the department. The filing and the remittance may be done electronically.

25 (b) The seller and any agent of the seller, for the purposes of reporting or paying the sales tax or use
26 tax, are subject to the audit and accountability provisions of the agreement.

27 ~~(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the~~
28 ~~date or dates set by the department.~~

29 (3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

30 (i) a retailer required to collect the tax; and

1 (ii) a purchaser with a direct payment permit; and

2 ~~(ii)~~(iii) a person that:

3 (A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or
4 use tax; and

5 (B) has not paid the tax to a retailer required to pay the tax.

6 (b) A return must be filed with and payment must be received by the department on or before the 20th
7 day of each month for taxes owed for sales occurring during the preceding month. A seller that has a tax liability
8 that averages less than \$100 a month may report and pay the tax on a quarterly basis and shall file the return
9 with payment received by the department before the 20th day of the month after the end of the quarter.

10 ~~(b)~~(c) Each return must be authenticated by the person filing the return or by the person's agent authorized in
11 writing to file the return.

12 (4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall
13 keep records, render statements, make returns, and comply with the provisions of this chapter and the rules
14 prescribed by the department. Each return or statement must include the information required by the rules of
15 the department. The department shall comply with the provisions of the agreement in determining reports and
16 records management requirements in reference to sellers that are registered under the agreement.

17 (b) For the purpose of determining compliance with the provisions of this chapter, the department is
18 authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making
19 a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property
20 of or in the possession of the person filing the return or another person. In determining compliance, the
21 department may use statistical sampling and other sampling techniques consistent with generally accepted
22 auditing standards. The department may also:

23 (i) require the attendance of a person having knowledge or information relevant to a return;

24 (ii) compel the production of books, papers, records, or memoranda by the person required to attend;

25 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is
26 or may be jeopardized because of delay;

27 (iv) take testimony on matters material to the determination; and

28 (v) administer oaths or affirmations.

29 (5) Pursuant to rules established by the department, returns may be computer-generated and
30 electronically filed."

1

2 **Section 86.** Section 15-68-505, MCA, is amended to read:

3 **"15-68-505. Credit for taxes paid on worthless accounts -- taxes paid if account collected. (1)**

4 Sales ~~taxes~~ tax paid by a person filing a return under 15-68-502 on sales found to be worthless and actually
5 deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent
6 payment of the tax.

7 (2) Bad debts may be deducted within 12 months after the month in which the bad debt has been
8 charged off for federal income tax purposes. "Charged off for federal income tax purposes" includes the charging
9 off of unpaid balances due on accounts as uncollectible or declaring as uncollectible such unpaid balance due
10 on accounts in the case of a seller who is not required to file federal income tax returns.

11 (3) If an account is subsequently collected, the sales tax must be paid on the amount collected.

12 (4) A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable
13 sales within a 12-month period defined by that bad debt.

14 (5) For purposes of computing a bad debt deduction or reporting a payment received on a previously
15 claimed bad debt, any payments made on a debt or account are applied first to interest, service charges, and
16 any other charges and second to the price of the property or service and sales tax on the property or service,
17 proportionally.

18 (6) If filing responsibilities have been assumed by a certified service provider, as defined in [section 91],
19 the certified service provider may claim any bad debt allowance on behalf of the seller.

20 (7) If the books and records of the seller claiming the bad debt allowance support an allocation of the
21 bad debts among several states, the bad debts may be allocated among those states."

22

23 **Section 87.** Section 15-68-510, MCA, is amended to read:

24 **"15-68-510. Vendor allowance. (1) (a)** A person filing a timely return under 15-68-502 may claim a
25 ~~quarterly~~ vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable
26 to the state, not to exceed \$350 a month for persons filing on a monthly basis ~~\$1,000 a quarter~~.

27 ~~(2)(b)~~ The allowance may be deducted on the return.

28 ~~(3)(c)~~ A person that files a return or payment after the due date for the return or payment may not claim
29 a vendor allowance.

30 (2) In lieu of the vendor allowance provided in subsection (1), certified service providers, as defined in

[section 91], must receive a monetary allowance determined as provided in the agreement and the sellers using the certified service providers may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax proceeds collected by the sellers using the certified service providers.

(3) In addition to the vendor allowance provided in subsection (1), a registered seller using a certified automated system, as defined in [section 91], must receive a percentage of the tax determined to be payable to the state. The percentage must be determined as provided in the agreement."

Section 88. Section 15-68-801, MCA, is amended to read:

"15-68-801. Administration -- rules. (1) The department shall:

~~(1)(a)~~ administer and enforce the provisions of this chapter;

~~(2)(b)~~ cause to be prepared and distributed forms and information that may be necessary to administer the provisions of this chapter; and

~~(3)(c)~~ adopt rules that may be necessary or appropriate to administer and enforce the provisions of this chapter.

(2) In administering the provisions of this chapter, the department shall, when applicable and not in conflict with Montana law, follow the provisions of the Streamlined Sales and Use Tax Agreement adopted pursuant to [sections 90 through 97]. The department shall report to the revenue and transportation interim committee, provided for in 5-5-227, on:

(a) the operation of the Streamlined Sales and Use Tax Agreement and the benefits and costs to the state of its participation; and

(b) changes to the Streamlined Sales and Use Tax Agreement that require changes in Montana law for compliance with the agreement."

Section 89. Section 15-68-815, MCA, is amended to read:

"15-68-815. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through (4), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under this chapter or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are

1 classified in a way that does not disclose the identity and content of any particular report or return. A person
2 violating the provisions of this section is subject to the penalty provided in ~~15-30-303~~ or 15-31-511 for violating
3 the confidentiality of individual income tax or corporation license information.

4 (2) (a) The department may enter into an agreement with the taxing officials of another state for the
5 interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax
6 in order to promote fair and equitable administration of the laws and to eliminate double taxation.

7 (b) In order to implement the provisions of this chapter, the department may furnish information on a
8 reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within
9 the state receiving the information that are similar to this section.

10 (3) In order to facilitate processing of returns and payment of taxes required by this chapter, the
11 department may contract with vendors and may disclose data to the vendors. The data disclosed must be
12 administered by the vendor in a manner consistent with this section.

13 (4) This section may not be construed to limit the investigative authority of the legislative branch, as
14 provided in 5-11-106, 5-12-303, or 5-13-309."

15
16 **NEW SECTION. Section 90. Uniform sales and use tax administration.** [Sections 90 through 97]
17 may be cited as the "Uniform Sales and Use Tax Administration Act".

18
19 **NEW SECTION. Section 91. Definitions.** As used in [sections 90 through 97], the following definitions
20 apply:

21 (1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

22 (2) "Certified automated system" means software certified jointly by the states that are signatories to
23 the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax
24 to remit to the appropriate state, and to maintain a record of the transaction.

25 (3) "Certified service provider" means an agent certified jointly by the states that are signatories to the
26 agreement to perform all of the seller's sales tax functions.

27 (4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited
28 liability partnership, corporation, or any other legal entity.

29 (5) "Sales tax" means the tax levied under 15-68-102.

30 (6) "Seller" means a person making sales, leases, or rentals of personal property.

1 (7) "State" means any state of the United States and the District of Columbia.

2 (8) "Use tax" means the tax levied under 15-68-102.

3
4 **NEW SECTION. Section 92. Authority to enter agreement.** (1) The department is authorized and
5 directed to enter into the agreement with one or more states to simplify and modernize sales tax and use tax
6 administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of
7 commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that
8 signatories to of the agreement to establish standards for certification of certified service providers and a certified
9 automated system and to establish performance standards for multistate sellers through a multistate central
10 registration system.

11 (2) The department is further authorized to take other actions reasonably required to implement the
12 provisions of [sections 90 through 97]. Other actions authorized by this section include but are not limited to the
13 adoption of rules and the joint procurement, with other signatory states, of goods and services in furtherance
14 of the agreement.

15 (3) The department or the department's designee is authorized to represent this state before the other
16 states that are signatories to the agreement.

17
18 **NEW SECTION. Section 93. Relationship to state law.** A provision of the agreement, in whole or in
19 part, does not invalidate or amend any provision of the law of this state. Adoption of the agreement by this state
20 does not amend or modify any law of this state. Implementation of any condition of the agreement within this
21 state, whether adopted before, at, or after this state becomes a signatory to the agreement, must be by the
22 action of this state.

23
24 **NEW SECTION. Section 94. Agreement requirements.** The department may not enter into the
25 agreement unless the agreement requires each state to abide by the following requirements:

26 (1) The agreement must set restrictions to achieve, over time, more uniform rates in Montana through
27 the following:

28 (a) limiting the number of state rates;

29 (b) limiting the application of maximums on the amount of state tax that is due on a transaction;

30 (c) limiting the application of thresholds on the application of state tax.

1 (2) The agreement must establish uniform standards for the following:

2 (a) the sourcing of transactions to taxing jurisdictions;

3 (b) the administration of exempt sales;

4 (c) the allowances that a seller may take for bad debts;

5 (d) sales tax and use tax returns and remittances.

6 (3) The agreement must require states to develop and adopt uniform definitions of sales tax and use
7 tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with
8 the uniform definitions.

9 (4) The agreement must provide a central, electronic registration system that allows a seller to register
10 to collect and remit sales taxes and use taxes for all signatory states.

11 (5) The agreement must provide that registration with the multistate central registration system and the
12 collection of sales taxes and use taxes in the signatory states will not be used as a factor in determining whether
13 the seller has nexus with a state for any tax.

14 (6) The agreement must provide for reduction of the burdens of complying with local sales taxes and
15 use taxes through the following:

16 (a) restricting variances between the state and local tax bases;

17 (b) requiring states to administer any sales taxes and use taxes levied by local jurisdictions within the
18 state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds
19 to, or be subject to independent audits from local taxing jurisdictions;

20 (c) restricting the frequency of changes in the local sales tax and use tax rates and setting effective
21 dates for the application of local jurisdictional boundary changes to local sales taxes and use taxes;

22 (d) providing notice of changes in local sales tax and use tax rates and of changes in the boundaries
23 of local taxing jurisdictions.

24 (7) The agreement must outline any monetary allowances that are to be provided by the states to sellers
25 or certified service providers.

26 (8) The agreement must require each state to certify compliance with the terms of the agreement prior
27 to becoming a signatory and to maintain compliance, under the laws of the state, with all provisions of the
28 agreement while a signatory.

29 (9) The agreement must require each state to adopt a uniform policy for certified service providers that
30 protects the privacy of consumers and maintains the confidentiality of tax information.

(10) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of representatives of states that are not signatory states to consult with in the administration of the agreement.

NEW SECTION. Section 95. Cooperating sovereigns. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the signatory states to establish and maintain a cooperative, simplified system for the application and administration of sales taxes and use taxes under the adopted law of each state.

NEW SECTION. Section 96. Limited binding and beneficial effect. (1) The agreement binds and inures only to the benefit of this state and the other signatory states. No person, other than a signatory state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the laws of this state and the other signatory states and not by the terms of the agreement.

(2) Consistent with subsection (1), no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) A law of this state or the application of a law of this state may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

NEW SECTION. Section 97. Seller and third-party liability. (1) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales taxes and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax due each signatory state on all sales transactions that it processes for the seller, except as set out in this section.

(b) A seller that contracts with a certified service provider is not liable to the state for sales tax or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items that it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider.

(c) A seller is subject to audit for transactions not processed by the certified service provider. The

signatory states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and that has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Section 98. Section 17-5-1102, MCA, is amended to read:

"17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual who may be permitted by an authorized officer, either alone or with the concurrence of another or others, to affix the individual's signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms is divisible into a class or series of obligations.

(3) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(4) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(5) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the

nominee of any of them or other person or nominee that in the ordinary course of its business maintains public obligation accounts for its customers.

(6) "Internal Revenue Code" ~~has the meaning provided in 15-30-101~~ means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in the agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means:

(a) the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents;

(b) the successor or successors of the official or official body; and

(c) any other person or group of persons who are assigned duties of the official or official body under applicable law.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the Internal Revenue Code. The term may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or any other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

1 (a) with respect to a certificated public obligation, that provides that:

2 (i) the certificated public obligation specify a person entitled to the public obligation or the rights it
3 represents; and

4 (ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose
5 by or on behalf of the issuer; and

6 (b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated
7 public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

8 (15) "Uncertificated public obligation" means an obligation that is:

9 (a) issued pursuant to a system of registration;

10 (b) not represented by an instrument; and

11 (c) either one of a class or series or by its terms divisible into a class or series of obligations."
12

13 **Section 99.** Section 17-6-311, MCA, is amended to read:

14 **"17-6-311. Limitation on size of investments.** (1) Except as provided in subsection (2) and this
15 subsection, an investment may not be made that will result in any one business enterprise or person receiving
16 a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of
17 which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise
18 or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred
19 for the project or enterprise for the coal tax investment that was made to the business enterprise or person must
20 be held by a commercial lender. This subsection does not:

21 (a) apply to a loan made pursuant to 17-6-317;

22 (b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

23 (c) apply to the purchase of debentures issued by a capital company. However, the total amount of
24 debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time
25 of purchase.

26 (2) The total amount of loans made pursuant to 17-6-309(2) or 17-6-317 may not exceed \$50 million,
27 and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not
28 exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant
29 to 17-6-309(2), the board shall consider:

30 (a) the estimated number of jobs to be created by the project within a 4-year period from the time that

- 1 the loan is made and the impact of the jobs on the state and the community where the project will be located;
- 2 (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business
- 3 and its employees;
- 4 (c) the current and projected ability of the community to provide necessary infrastructure for economic
- 5 and community development purposes;
- 6 (d) the amount of increased salaries, wages, and business incomes of existing jobholders and
- 7 businesses; and
- 8 (e) other matters that the board considers necessary."
- 9

10 **Section 100.** Section 17-6-316, MCA, is amended to read:

11 **"17-6-316. Economic development loan -- infrastructure tax credit.** (1) A loan made pursuant to

12 17-6-309(2) must be used to build infrastructure, as provided for in 17-15-4288(4), such as water systems, sewer

13 systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation

14 of a business in Montana. The loan must be made to a local government that will create the necessary

15 infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan

16 may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of

17 the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made

18 pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate

19 reduction passes through to the business creating the jobs.

20 (2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the

21 condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received

22 pursuant to subsection (3) of this section must be returned to the state.

23 (3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and

24 subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter ~~30~~ or 31, for the

25 portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not

26 exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years."

27

28 **Section 101.** Section 17-6-602, MCA, is amended to read:

29 **"17-6-602. Definitions.** As used in this part, the following definitions apply:

- 30 (1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons

1 by the state through any program of benefits, services, or coverage, including ~~income~~ tax incentives.

2 (2) "Health care" has the meaning provided in 50-16-504.

3 (3) (a) "Programs for tobacco disease prevention" means programs of services administered by the
4 state for the purposes of informing individuals of the health risks of tobacco use and exposure to secondhand
5 tobacco smoke, assisting persons in the avoidance of tobacco products use, and assisting individuals in
6 cessation of tobacco use.

7 (b) Programs for tobacco disease prevention include:

8 (i) community-based education programs;

9 (ii) American Indian community tobacco education programs;

10 (iii) general public awareness and education programs;

11 (iv) tobacco cessation services;

12 (v) a tobacco use resource center;

13 (vi) special education and cessation programs to reach youth and women of childbearing age;

14 (vii) smokeless tobacco user programs; and

15 (viii) advertising issue programs.

16 (4) "Tobacco products" means a substance intended for human use that contains tobacco and includes
17 but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

18 (5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4,
19 of the Montana constitution and implemented through this part."

20
21 **Section 102.** Section 17-7-111, MCA, is amended to read:

22 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**
23 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
24 need information that is consistent and accurate. Necessary information includes detailed disbursements by fund
25 type for each agency and program for the appropriate time period, recommendations for creating a balanced
26 budget, and recommended disbursements and estimated receipts by fund type and fund category.

27 (b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall
28 by agreement:

29 (i) establish necessary standards, formats, and other matters necessary to share information between
30 the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget;

1 and

2 (ii) provide for the collection and provision of budgetary and financial information that is in addition to
3 or different from the information otherwise required to be provided pursuant to this section.

4 (2) In the preparation of a state budget, the budget director shall, not later than the date specified in
5 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget
6 estimates by the budget director. These forms must be prescribed by the budget director to procure the
7 information required by subsection (3). The forms must be submitted to the budget director by the date provided
8 in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in
9 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this
10 section or the instructions given for completing the forms.

11 (3) The agency budget request must set forth a balanced financial plan for the agency completing the
12 forms for each fiscal year of the ensuing biennium. The plan must consist of:

13 (a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that
14 transfer profits to the general fund or to an account subject to appropriation for the current base budget
15 expenditures, including statutory appropriations, and for each present law adjustment and new proposal request
16 setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing
17 a balance between the total proposed disbursements and the total anticipated receipts, together with the other
18 means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding
19 figures for the last-completed fiscal year and the fiscal year in progress;

20 (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the
21 current biennium and estimated for the subsequent biennium;

22 (c) a statement of the agency mission and a statement of goals and objectives for each program of the
23 agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable
24 information to enable the legislature to formulate an appropriations policy regarding the agency and its programs
25 and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals
26 and objectives.

27 (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE
28 and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

29 (e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements
30 for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement

1 category;

2 (f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general
3 appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the
4 budget director. Each agency plan must include base budget reductions that reflect the required percentage
5 reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations
6 of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff
7 under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund
8 balances to the general fund. The plan must include:

9 (i) a prioritized list of services that would be eliminated or reduced;

10 (ii) for each service included in the prioritized list, the savings that would result from the elimination or
11 reduction; and

12 (iii) the consequences or impacts of the proposed elimination or reduction of each service.

13 (g) a reference for each new information technology proposal stating whether the new proposal is
14 included in the approved agency information technology plan as required in 2-17-523; and

15 (h) other information the budget director feels is necessary for the preparation of a budget.

16 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
17 17-7-112:

18 (a) detailed recommendations for the state long-range building program. Each recommendation must
19 be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

20 (b) a statewide summary of recommendations for information technology projects and new initiatives.
21 Each recommendation must be presented by institution, agency, or branch and by funding source, and
22 recommendations for major new information technology projects must contain the information identified in
23 2-17-526.

24 (c) the proposed pay plan schedule for all executive branch employees at the program level by fund,
25 with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under
26 this subsection is not an unfair labor practice under 39-31-401.

27 (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part
28 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and
29 development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program
30 under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

~~(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."~~

Section 103. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

1 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined
2 benefit retirement plan over the present value of future normal costs in that retirement plan.

3 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

4 (7) "Additional contributions" means contributions made by a member of a defined benefit plan to
5 purchase various types of optional service credit as allowed by the applicable retirement plan.

6 (8) "Annuity" means:

7 (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial
8 equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement
9 plan and are not subject to periodic or one-time increases; or

10 (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

11 (9) "Benefit" means:

12 (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit
13 payment provided by a defined benefit retirement plan; or

14 (b) a payment or distribution under the defined contribution retirement plan, including a disability
15 payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity
16 purchased under 19-3-2124.

17 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

18 (11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after
19 the death of a retired member.

20 (12) "Covered employment" means employment in a covered position.

21 (13) "Covered position" means a position in which the employee must be a member of the retirement
22 system except as otherwise provided by law.

23 (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement
24 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

25 (15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public
26 employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and
27 that is not a defined benefit plan.

28 (16) "Department" means the department of administration.

29 (17) "Designated beneficiary" means the person designated by a member or payment recipient to
30 receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of

1 the member or payment recipient, including annuities derived from the benefits or payments.

2 (18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by
3 reason of physical or mental incapacity. The disability must be incurred while the member is an active member
4 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on
5 the basis of competent medical opinion.

6 (19) "Early retirement benefit" means the retirement benefit payable to a member following early
7 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

8 (20) "Employee" means a person who is employed by an employer in any capacity and whose salary
9 is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying
10 retirement contributions pursuant to 7-11-105.

11 (21) "Employer" means a governmental agency participating in a retirement system enumerated in
12 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as
13 responsible for paying retirement contributions pursuant to 7-11-105.

14 (22) "Essential elements of the position" means fundamental job duties. An element may be considered
15 essential because of but not limited to the following factors:

16 (a) the position exists to perform the element;

17 (b) there are a limited number of employees to perform the element; or

18 (c) the element is highly specialized.

19 (23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following
20 June 30.

21 (24) "Inactive member" means a member who is not an active or retired member.

22 (25) "Internal Revenue Code" ~~has the meaning provided in 15-30-101~~ means the Internal Revenue Code
23 of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the
24 Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

25 (26) "Member" means either:

26 (a) a person with accumulated contributions and service credited with a defined benefit retirement plan
27 or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

28 (b) a person with a retirement account in the defined contribution plan.

29 (27) "Membership service" means the periods of service that are used to determine eligibility for
30 retirement or other benefits.

1 (28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost
2 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in
3 the future.

4 (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

5 (29) "Normal retirement age" means the age at which a member is eligible to immediately receive a
6 retirement benefit based on the member's age, length of service, or both, as specified under the member's
7 retirement system, without disability and without an actuarial or similar reduction in the benefit.

8 (30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from
9 state- or employer-controlled funds.

10 (31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a
11 retirement system or plan in public trust.

12 (32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll
13 covered by the defined contribution plan members that is allocated to the public employees' retirement system's
14 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially
15 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member
16 selection of the defined contribution plan.

17 (33) "Regular contributions" means contributions required from members under a retirement plan.

18 (34) "Regular interest" means interest at rates set from time to time by the board.

19 (35) "Retirement" or "retired" means the status of a member who has been terminated from service for
20 at least 30 days and has received and accepted a retirement benefit from a retirement plan.

21 (36) "Retirement account" means an individual account within the defined contribution retirement plan
22 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member
23 of the defined contribution plan or the member's beneficiary.

24 (37) "Retirement benefit" means:

25 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement,
26 early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a
27 defined benefit plan, the term does not mean an annuity.

28 (b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

29 (38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under
30 one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(47) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(48) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

1 (a) the member's contribution account;

2 (b) the vested portion of the employer's contribution account; and

3 (c) the member's account for other contributions.

4 (49) "Vested member" or "vested" means:

5 (a) with respect to a defined benefit plan, a member or the status of a member who has attained the
6 minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

7 (b) with respect to the defined contribution plan, a member or the status of a member who meets the
8 minimum membership service requirement of 19-3-2116.

9 (50) "Written application" or "written election" means a written instrument, prescribed by the board or
10 required by law, properly signed and filed with the board, that contains all required information, including
11 documentation that the board considers necessary."
12

13 **Section 104.** Section 19-2-1004, MCA, is amended to read:

14 **"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and 19-2-909,
15 the right of a person to any benefit or payment from a retirement system or plan and the money in the system
16 or plan's pension trust fund is not:

17 (1) subject to execution, garnishment, attachment, or any other process;

18 ~~(2) subject to state, county, or municipal taxes except for:~~

19 ~~—— (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant~~
20 ~~to 15-30-111(2)(c)(ii); or~~

21 ~~—— (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as~~
22 ~~provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or~~

23 ~~(3)(2)~~ assignable except as specifically provided in this chapter."
24

25 **Section 105.** Section 19-17-407, MCA, is amended to read:

26 **"19-17-407. Exemption from taxation and legal process.** ~~(1) The first \$3,600 or the amount~~
27 ~~determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and~~
28 ~~municipal taxation.~~

29 ~~—— (2) Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to~~
30 ~~execution, garnishment, attachment, or any other process."~~

1

2 **Section 106.** Section 19-18-612, MCA, is amended to read:

3 **"19-18-612. Protection of benefits from legal process and taxation -- nonassignability.** (1) Except
4 for execution or withholding for the payment of child support or for the payment of spousal support for a spouse
5 or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are
6 not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may
7 not assign the right, and the association and trustees may not recognize any assignment or pay over any sum
8 assigned.

9 ~~(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under~~
10 ~~this part is exempt from state, county, and municipal taxation."~~

11

12 **Section 107.** Section 19-19-504, MCA, is amended to read:

13 **"19-19-504. Protection of benefits from legal process and taxation.** (1) Except for execution or
14 withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse
15 who is the custodial parent of the child, the benefits provided for in this part are not subject to execution,
16 garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are
17 unassignable except as specifically provided in 19-19-505.

18 ~~(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under~~
19 ~~this part is exempt from state, county, and municipal taxation."~~

20

21 **Section 108.** Section 19-20-101, MCA, is amended to read:

22 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
23 following definitions apply:

24 (1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation
25 of a member or paid by a member and credited to the member's individual account in the annuity savings fund,
26 together with interest. Regular interest must be computed and allowed to provide a benefit at the time of
27 retirement.

28 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality
29 table and interest rate assumption set by the retirement board.

30 (3) "Average final compensation" means the average of a member's earned compensation during the

1 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on
2 which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have
3 been converted by an employer to earned compensation for all members and have been continuously reported
4 as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the
5 amounts may be included in the calculation of average final compensation. If amounts defined in subsection
6 (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given
7 the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that
8 constitute average final compensation must be included in average final compensation as provided under
9 19-20-716(1)(b).

10 (4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit
11 recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit
12 recipient.

13 (5) "Creditable service" is that service defined by 19-20-401.

14 (6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of
15 maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer
16 before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's
17 compensation.

18 (b) Earned compensation does not mean:

19 (i) direct employer premium payments on behalf of members for health or dependent care expense
20 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any
21 other insurance;

22 (ii) any direct employer payment or reimbursement for:

23 (A) professional membership dues;

24 (B) maintenance;

25 (C) housing;

26 (D) day care;

27 (E) automobile, travel, lodging, or entertaining expenses; or

28 (F) any similar payment for any form of maintenance, allowance, or expenses;

29 (iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

30 (iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" ~~has the meaning provided in 15-30-101~~ means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September

1 1, 1937.

2 (14) "Regular interest" means interest at a rate set by the retirement board in accordance with
3 19-20-501(2).

4 (15) "Retired member" means a person who has terminated employment that qualified the person for
5 membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to
6 this chapter.

7 (16) "Retirement allowance" means a monthly payment due to a person who has qualified for service
8 or disability retirement or due to a beneficiary as provided in 19-20-1001.

9 (17) "Retirement board" or "board" means the retirement system's governing board provided for in
10 2-15-1010.

11 (18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of
12 Montana provided for in 19-20-102.

13 (19) "Service" means the performance of instructional duties or related activities that would entitle the
14 person to active membership in the retirement system under the provisions of 19-20-302.

15 (20) "Termination" or "terminate" means that the member has severed the employment relationship with
16 the member's employer and that all, if any, payments due upon termination of employment, including but not
17 limited to accrued sick and annual leave balances, have been paid to the member.

18 (21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,
19 amounts provided under a window or early retirement incentive plan, or other payments contingent on the
20 employee terminating employment and on which employee and employer contributions have been paid as
21 required by 19-20-716.

22 (b) Termination pay does not include:

23 (i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without
24 regard to the wage base limitation; and

25 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section
26 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

27 (22) "Vested" means that a member has been credited with at least 5 full years of membership service
28 upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a
29 future retirement benefit.

30 (23) "Written application" or "written election" means a written instrument, required by statute or the rules

1 of the board, properly signed, and filed with the board, that contains all the required information, including
2 documentation that the board considers necessary."

3
4 **Section 109.** Section 19-20-706, MCA, is amended to read:

5 **"19-20-706. Exemption from ~~taxation and legal process~~.** Except as provided in 19-20-305 and
6 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the
7 provisions of the retirement system and the accumulated contributions and cash and securities in the various
8 funds of the retirement system are:

9 ~~(1) exempted from any state, county, or municipal tax of the state of Montana except for:~~

10 ~~—— (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant~~
11 ~~to 15-30-111(2)(c)(ii); or~~

12 ~~—— (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June~~
13 ~~30, 1985, as provided in 19-20-602;~~

14 ~~(2)(1)~~ not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
15 equity, or any other process; and

16 ~~(3)(2)~~ unassignable except as specifically provided in this chapter."
17

18 **Section 110.** Section 19-21-212, MCA, is amended to read:

19 **"19-21-212. Exemption from ~~taxation, legal process, and assessments~~.** Except for execution or
20 withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse
21 who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement
22 program and the earnings on the contributions are:

23 ~~(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined~~
24 ~~pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;~~

25 ~~(2)(1)~~ not subject to execution, garnishment, attachment, or other process;

26 ~~(3)(2)~~ not covered or assessable by an insurance guaranty association; and

27 ~~(4)(3)~~ unassignable except as specifically provided in the contracts."
28

29 **Section 111.** Section 19-50-101, MCA, is amended to read:

30 **"19-50-101. Definitions.** For the purposes of this chapter, unless a different meaning is plainly implied

1 by the context, the following definitions apply:

2 (1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or
3 an appropriate officer of a political subdivision.

4 (2) "Deferred compensation" means that income which an employee may legally defer in a deferred
5 compensation plan established under this chapter pursuant to the rulings of the internal revenue service and
6 which, while invested, is exempt from ~~state and~~ federal income tax on the employee's contribution and on the
7 interest, dividends, and capital gains until ultimately distributed to the employee.

8 (3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the
9 Internal Revenue Code.

10 (4) "Employee" means any person, including independent contractors and elected officials, receiving
11 compensation from the state or a political subdivision for performing services.

12 (5) "Fund" means the state deferred compensation investment account.

13 (6) "Participant" means an employee enrolled in the plan.

14 (7) "Political subdivision" means any city, town, county, or other political subdivision of the state of
15 Montana."

16

17 **Section 112.** Section 20-25-503, MCA, is amended to read:

18 **"20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit
19 registering authority, it is presumed the domicile of a minor is that:

20 (a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent
21 having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides;
22 or

23 (b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose
24 of the appointment is not to qualify the minor as a resident of this state.

25 (2) A resident student who marries a nonresident does not by that fact alone lose resident status for
26 tuition and fee purposes for a period of 4 years after marriage.

27 (3) Residence is not lost because of relocation as a member of the armed forces of the United States.

28 (4) A new domicile is established by a qualified person if the person is physically present in Montana
29 with no intention to acquire a domicile outside of Montana.

30 (5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana ~~and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes~~ and renounces residency in any other state and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 113. Section 20-25-504, MCA, is amended to read:

"20-25-504. Evidence as to domiciliary intent -- changes in status. (1) To determine the domicile of a person, the units of the system shall ~~apply the following rules:~~

~~—— (a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.~~

~~—— (b) A person must intend~~ consider whether the person intends to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence ~~shall~~ must be filed with the registering authority of the unit. Changes in classification ~~shall~~ must be in writing signed by the registering authority and ~~shall~~ must take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if ~~his~~ the minor's parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom ~~he~~ the minor customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile ~~heretofore set forth in this subsection.~~

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in ~~his or his dependent's~~ classification for tuition and fee purposes unless ~~he~~ the individual completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the ~~executive secretary of the Montana university system~~ commissioner. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of ~~his~~ the decision and a complete file on the student to the ~~executive secretary~~ commissioner. The ~~executive secretary~~ commissioner may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the ~~executive secretary~~ commissioner shall determine the resident status of the student and shall notify the student and the registering authority of ~~his~~ the decision. The ~~executive secretary's~~ commissioner's decision may be appealed to the regents if the regents agree to ~~entertain such~~ consider an appeal."

Section 114. Section 33-27-101, MCA, is amended to read:

"33-27-101. Short title. Sections ~~15-30-107, 15-30-127, 15-31-117; and~~ 15-31-118; and this chapter may be cited as the "Independent Liability Fund Act".

Section 115. Section 33-27-102, MCA, is amended to read:

"33-27-102. Purpose. The purpose of ~~15-30-107, 15-30-127, 15-31-117; and~~ 15-31-118; and this chapter is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties."

Section 116. Section 33-27-103, MCA, is amended to read:

"33-27-103. Definitions. As used in ~~15-30-107, 15-30-127, 15-31-117; and~~ 15-31-118; and this chapter, the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana ~~individual income tax~~; corporate license tax; or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set

1 aside by a small business to meet the needs of any liability claims, except workers' compensation claims,
2 brought against it by third parties.

3 (3) "Liability claim" means any legal or extralegal action by a third party asserting a right to
4 compensation for a wrong done to it by a small business with an independent liability fund.

5 (4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state
6 and qualified as a small business under the criteria established by the federal small business administration on
7 April 20, 1987.

8 (5) "Third party" means a person other than an employee or the management of a small business or
9 of a subsidiary or closely related enterprise of a small business."

10
11 **Section 117.** Section 37-4-104, MCA, is amended to read:

12 **"37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by**
13 **personal representative -- restrictions.** (1) For the purpose of selling or otherwise disposing of a deceased
14 or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed
15 to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal
16 representative of a disabled dentist may contract with a dentist to manage the dental practice at an
17 establishment where dental operations, oral surgery, or dental services are provided.

18 (2) A personal representative may not:

19 (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product,
20 process, or activity as it relates to the delivery of dental care;

21 (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over
22 all qualitative and quantitative aspects of the delivery of dental care;

23 (c) allow any person other than a dentist to supervise and control the selection, compensation, terms,
24 conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

25 (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist
26 or the dentist's practice; or

27 (e) limit or define the scope of services offered by the dentist.

28 (3) For the purposes of this section:

29 (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the
30 actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered

1 to a patient;

2 (b) "disabled" ~~has the same meaning as provided for the term "permanently and totally disabled" in~~
3 ~~15-30-114~~ means unable to engage in any substantial gainful activity by reason of any medically determined
4 physical or mental impairment lasting or expected to last at least 12 months; and

5 (c) "personal representative" of the estate of a deceased dentist has the same meaning as provided
6 for the term in 72-1-103.

7 (4) The 12-month period provided for in subsection (1) begins when:

8 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
9 certificate of the deceased with the department; or

10 (b) the personal representative of the disabled dentist files a verified copy of a document signed by a
11 licensed physician that attests to the dentist's disability."

12
13 **Section 118.** Section 39-51-1301, MCA, is amended to read:

14 **"39-51-1301. Penalty and interest on past-due reports and taxes.** (1) Failure to file reports and
15 payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an
16 employer to penalty and interest, as provided by ~~15-30-209~~ 15-1-216.

17 (2) There is an account in the federal special revenue fund. Penalties and interest collected for
18 unemployment insurance obligations must be deposited in that account. Money deposited in that account and
19 appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may
20 only be used by the department or its delegate to administer this chapter, including the detection and collection
21 of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts
22 appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred
23 by the department to the unemployment insurance trust fund at the end of each fiscal year.

24 (3) All money accruing to the unemployment insurance trust fund from interest and penalties collected
25 on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance
26 benefits and may not be used for any other purpose."

27
28 **Section 119.** Section 39-51-2402, MCA, is amended to read:

29 **"39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
30 department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the

1 deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy
2 ~~will~~ shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum
3 benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who
4 shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect
5 to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in
6 accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302
7 ~~and 15-30-257~~ during the time that the department delegated the duties associated with the administration of
8 unemployment insurance contributions to the department of revenue pursuant to 39-51-301. The deputy shall
9 promptly notify the claimant and any other interested party of the decision and the reasons for reaching the
10 decision.

11 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and
12 other interested parties of the amended decision and the reasons for the decision.

13 (3) A determination or redetermination of an initial or additional claim may not be made under this
14 section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is
15 mailed to each interested party.

16 (4) A determination or redetermination is final unless an interested party entitled to notice of the decision
17 applies for reconsideration of the determination or appeals the decision within 10 days after the notification was
18 mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

19 (5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after
20 2 years from the date of the initial determination.

21 (6) A redetermination may be made within 3 years from the date of the initial determination of a claim
22 if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact
23 by the claimant or the employer."
24

25 **Section 120.** Section 53-2-211, MCA, is amended to read:

26 **"53-2-211. Department to share eligibility data.** (1) The department shall make available to the
27 unemployment compensation program of the department of labor and industry all information contained in its
28 files and records pertaining to eligibility of persons for medicaid, financial assistance and nonfinancial
29 assistance, as defined in 53-2-902, and food stamps. The information made available must include information
30 on the amount and source of an applicant's income. The information received from the department must be used

1 by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits
2 under the unemployment compensation program of the state and for no other purpose.

3 (2) The department shall make available to the unemployment compensation and workers'
4 compensation programs of the department of labor and industry all information contained in its files and records
5 pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made
6 available must include information on the amount and source of an applicant's income. The information received
7 from the department must be used by the department of labor and industry for the purpose of determining fraud,
8 abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs
9 of the state and for no other purpose.

10 (3) (a) Subject to federal restrictions, the department may request information from the department of
11 labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If
12 ~~the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers'~~
13 ~~compensation, or occupational benefits, the department of labor and industry may request information from the~~
14 ~~department of revenue pertaining to income as provided in 15-30-303(8)(c).~~

15 (b) The information must be used by the department for the purpose of determining fraud, abuse, or
16 eligibility for benefits.

17 (4) The department may, to the extent permitted by federal law, make available to an agency of the
18 state or to any other organization information contained in its files and records pertaining to the eligibility of
19 persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps,
20 low-income energy assistance, weatherization, or other public assistance."

21
22 **Section 121.** Section 53-6-1001, MCA, is amended to read:

23 **"53-6-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "Average wholesale price" means the wholesale price charged on a specific commodity that is
26 assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

27 (2) "Department" means the department of public health and human services provided for in Title 2,
28 chapter 15, part 22.

29 (3) "Discounted price" means a price that is less than or equal to the average wholesale price, minus
30 a percentage between 6% and 25% determined by the department pursuant to 53-6-1002.

(4) "Gross household income" ~~has the meaning provided in 15-30-171~~ means all income received by all individuals of a household while they are members of the household.

(5) (a) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(6) (a) "Income" means, except as provided in subsection (6)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security, except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (6), income is reduced by the taxpayer's basis as defined in the Internal Revenue Code.

~~(5)(7)~~ "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

~~(6)(8)~~ "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

~~(7)(9)~~ "Program" means the medicaid prescription drug program provided for in 53-6-1002."

Section 122. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds for those purposes, including refunding bonds, in the form and upon the terms that it may determine, payable out of any revenue of the authority, including revenue derived from:

- 1 (a) an airport or air navigation facility or facilities;
2 (b) taxes levied pursuant to 67-11-301 or other law for airport purposes;
3 (c) grants or contributions from the federal government; or
4 (d) other sources.

5 (2) The bonds may be issued by resolution of the authority, without an election and without any limitation
6 of amount, except that bonds may not be issued at any time if the total amount of principal and interest to
7 become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same
8 source or sources is pledged exceeds the amount of revenue to be received in that year as estimated in the
9 resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to
10 impose, maintain, and collect rates, charges, rentals, and taxes, if any is pledged, sufficient to make the revenue
11 from the pledged source in the year at least equal to the amount of principal and interest due in that year.

12 (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102.
13 Except as otherwise provided in this section, any bonds issued pursuant to this chapter by an authority may be
14 payable as to principal and interest solely from revenue of the authority and must state on their face the
15 applicable limitations or restrictions regarding the source from which the principal and interest are payable.

16 (4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared
17 to be issued for an essential public and governmental purpose by a political subdivision ~~within the meaning of~~
18 ~~15-30-111(2)(a).~~

19 (5) For the security of bonds, the authority or municipality may by resolution make and enter into any
20 covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a
21 municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and
22 interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this
23 chapter, prior to the payment of current costs of operation and maintenance of the facilities.

24 (6) Subject to the conditions stated in this subsection, the governing body of any municipality having
25 a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or
26 by an authority in which the municipality is included, may by resolution covenant that in the event that at any time
27 all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest
28 then due, it shall, subject to 15-10-420, levy a general tax upon all of the taxable property in the municipality for
29 the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely
30 to occur within 1 year for the payment of principal and interest due on the bonds, it shall, subject to 15-10-420,

1 levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the
2 taxes are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that
3 more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds
4 pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in
5 anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may
6 determine. The resolution must state the principal amount and purpose of the bonds and the substance of the
7 covenant respecting deficiencies. A resolution may not be effective until the question of its approval has been
8 submitted to the qualified electors of the municipality at a special election called for that purpose by the
9 governing body of the municipality and a majority of the electors voting on the question have voted in favor of
10 the resolution. The special election must be held in conjunction with a regular or primary election. The notice
11 and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation
12 bonds in Title 7, chapter 7, part 42, for an election called by cities and towns and as provided for county general
13 obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors
14 voting on the issue vote against approval of the resolution, the municipality may not make the covenant or levy
15 a tax for the payment of deficiencies pursuant to this section, but the municipality or authority may issue bonds
16 under this chapter payable solely from the sources referred to in subsection (1)."

17
18 **Section 123.** Section 87-2-102, MCA, is amended to read:

19 **"87-2-102. Resident defined.** In determining whether a person is a resident for the purpose of issuing
20 resident hunting, fishing, and trapping licenses, the following provisions apply:

21 (1) (a) A member of the regular armed forces of the United States, a member's dependent, ~~as defined~~
22 ~~in 15-30-113~~, who resides in the member's Montana household, or a member of the armed forces of a foreign
23 government attached to the regular armed forces of the United States is considered a resident for the purposes
24 of this chapter if:

25 (i) the member was a resident of Montana under the provisions of subsection (4) at the time the member
26 entered the armed forces and continues to meet the residency criteria of subsections (4)(b) through ~~(4)(e)~~ (4)(d);
27 or

28 (ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana
29 for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course
30 approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a

1 hunter safety course in any state or province. The 30-day residence requirement is waived in time of war.
2 Reassignment to another state, United States territory, or country terminates Montana residency for purposes
3 of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and
4 dependents continue to physically reside in Montana and the member continues to meet the residency criteria
5 of subsections (4)(b) through ~~(4)(e)~~ (4)(d). The designation of Montana by a member of the regular armed forces
6 as a "home of record" or "home of residence" in that member's armed forces records does not determine the
7 member's residency for purposes of this section.

8 (b) A member of the regular armed forces of the United States who is otherwise considered a Montana
9 resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue
10 of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping
11 privileges in another state or country.

12 (2) A person who has physically resided in Montana as the person's principal or primary home or place
13 of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making
14 application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this
15 section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary
16 home or place of abode.

17 (3) A person who obtains residency under subsection (2) may continue to be a resident for purposes
18 of this section by physically residing in Montana as the person's principal or primary home or place of abode for
19 not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any
20 resident hunting, fishing, or trapping license.

21 (4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to
22 be considered a resident for purposes of this section:

23 (a) the person's principal or primary home or place of abode is in Montana;

24 ~~(b) the person files Montana state income tax returns as a resident if required to file;~~

25 ~~(e)(b)~~ (b) the person licenses and titles in Montana as required by law any vehicles that the person owns
26 and operates in Montana;

27 ~~(d)(c)~~ (c) except as provided in subsection (1)(b), the person does not possess or apply for any resident
28 hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or
29 trapping privileges in another state or country; and

30 ~~(e)(d)~~ (d) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

~~(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.~~

~~(c)~~(b) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

~~(d)~~(c) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status.

(11) For the purposes of this section:

(a) "dependent" means any of the following individuals over half of whose support, for the calendar year in which residency is at issue, was received from the resident on whom the dependent depends:

(i) a son or daughter of the resident or a descendant of either;

(ii) a stepson or stepdaughter of the resident;

1 (iii) a brother, sister, stepbrother, or stepsister of the resident;

2 (iv) the father or mother of the resident or an ancestor of either;

3 (v) a stepfather or stepmother of the resident;

4 (vi) a son or daughter of a brother or sister of the resident;

5 (vii) a brother or sister of the father or mother of the resident;

6 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the
7 resident;

8 (ix) an individual who, for the calendar year in which residency is at issue, has as the individual's
9 principal place of abode the home of the resident and is a member of the resident's household; or

10 (x) an individual who:

11 (A) is a descendant of a brother or sister of the father or mother of the resident;

12 (B) for the calendar year in which residency is at issue received institutional care required by reason
13 of a physical or mental disability; and

14 (C) before receiving such institutional care, was a member of the same household as the resident;

15 (b) "brother" and "sister" include a brother or sister by the half blood.

16 (12) In determining whether any of the relationships specified in subsection (11) exist, a legally adopted
17 child of an individual must be treated as a child of the individual by blood."

18
19 **Section 124.** Section 87-2-105, MCA, is amended to read:

20 **"87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a person who is
21 born after January 1, 1985, unless the person authorized to issue the license determines proof of completion
22 of:

23 (a) a Montana hunter safety and education course established in subsection (4) or (6); or

24 (b) a hunter safety course in any other state or province.

25 (2) A hunting license may not be issued to a member of the regular armed forces of the United States
26 or to a member of the armed forces of a foreign government attached to the armed forces of the United States
27 who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to
28 a member's dependents, as defined in ~~45-30-113~~ 87-2-102, who reside in the member's Montana household,
29 unless the person authorized to issue the license determines proof of completion of a hunter safety course
30 approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 125. Section 87-5-121, MCA, is amended to read:

"87-5-121. Nongame wildlife account. (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All ~~money collected under 15-30-150 and all~~ interest earned by the fund before being expended under this section must be deposited in the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, ~~except that money collected under 15-30-150 may not be used:~~

~~—— (a) for the purchase of any real property; or~~

~~—— (b) in such a way as to interfere with the production on or management of private property."~~

Section 126. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000; or

(b) a qualified Montana small business investment capital company a certified Montana small business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as a qualified Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) ~~(a)~~ The total amount of tax credits authorized for a single qualified capital company or a qualified Montana small business investment capital company may not exceed \$1,500,000, ~~except that a qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1994.~~ In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

~~(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June~~

1 ~~30, 1989, that is allocated to qualified companies.~~

2 (4) (a) ~~Before January 1, 1991, credits~~ Credits must be allocated to qualified companies in the order
3 that completed applications for designation as qualified capital companies are received by the department, and
4 the department shall certify to each company its appropriate allocation.

5 ~~(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be~~
6 ~~allocated to a qualified Montana small business investment capital company, and the department shall certify~~
7 ~~the allocation to the company.~~

8 ~~(c)~~ (b) If the legislature provides additional tax credits under this chapter ~~after June 30, 1991~~, or if tax
9 credits become available by reversion to the department by a capital company or by a qualified Montana small
10 business investment capital company, those additional or reverted tax credits must be allocated by the
11 department to qualified capital companies or to a qualified Montana small business investment capital company
12 in accordance with this chapter and the rules of the department.

13 (5) Investors in a qualified Montana capital company or in a qualified Montana small business
14 investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a
15 certified company prior to designation as a qualified Montana capital company or as a qualified Montana small
16 business investment capital company may, at the discretion of the investor, be placed in an escrow account in
17 a Montana financial institution pending designation of the company as a qualified Montana capital company or
18 as a qualified Montana small business investment capital company.

19 (6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation,
20 partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified
21 Montana capital company or a qualified Montana small business investment capital company is entitled to a tax
22 credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital
23 companies of \$150,000 per taxpayer, except that, as applied to a qualified small business investment capital
24 company, the maximum tax credit is \$250,000 per taxpayer and the tax credit limitation relating to a capital
25 investment in a qualified Montana small business investment capital company must be in addition to any other
26 tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor
27 pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined
28 in 15-30-1101 or a partnership may be claimed by the small business corporation shareholders or the partners.

29 (7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's corporation
30 license or income tax liability or coal severance tax liability for the ~~taxable~~ tax year in which the investment in

a qualified Montana capital company or a qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current ~~taxable tax~~ year plus the amount of credit, if any, carried forward from a previous ~~taxable tax~~ year exceeds the taxpayer's tax liability for the current ~~taxable tax~~ year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding ~~taxable tax~~ years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 ~~taxable tax~~ years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) ~~An individual;~~ A small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not more than \$250,000 in the case of a qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. ~~An individual;~~ A small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim a deduction under the provisions of Title 15, chapter ~~30 or~~ 31, for donation of stock in a qualified Montana small business investment capital company."

NEW SECTION. Section 127. Repealer. Sections 2-18-1312, 15-1-102, 15-1-230, 15-1-231, 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-106, 15-30-107, 15-30-110, 15-30-111, 15-30-112, 15-30-113, 15-30-114, 15-30-115, 15-30-116, 15-30-117, 15-30-121, 15-30-122, 15-30-123, 15-30-124, 15-30-125, 15-30-126, 15-30-127, 15-30-128, 15-30-129, 15-30-130, 15-30-131, 15-30-132, 15-30-134, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-141, 15-30-142, 15-30-143, 15-30-144, 15-30-145, 15-30-146, 15-30-147, 15-30-148, 15-30-149, 15-30-150, 15-30-151, 15-30-152, 15-30-153, 15-30-154,

1 15-30-155, 15-30-156, 15-30-157, 15-30-165, 15-30-166, 15-30-167, 15-30-168, 15-30-180, 15-30-182,
2 15-30-183, 15-30-186, 15-30-187, 15-30-188, 15-30-189, 15-30-190, 15-30-191, 15-30-192, 15-30-201,
3 15-30-202, 15-30-203, 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-208, 15-30-209, 15-30-210,
4 15-30-215, 15-30-241, 15-30-247, 15-30-248, 15-30-249, 15-30-250, 15-30-251, 15-30-255, 15-30-256,
5 15-30-257, 15-30-301, 15-30-302, 15-30-303, 15-30-304, 15-30-305, 15-30-306, 15-30-307, 15-30-310,
6 15-30-311, 15-30-312, 15-30-313, 15-30-314, 15-30-316, 15-30-321, 15-30-323, 15-30-324, 15-30-331,
7 15-30-601, 15-30-602, 15-30-603, 15-30-604, 15-30-605, 15-30-1111, 15-32-109, 15-32-115, 15-32-201,
8 15-32-202, 15-32-203, 15-61-202, and 15-62-207, MCA, are repealed.

9
10 **NEW SECTION. Section 128. Direction to code commissioner.** (1) Sections 15-30-163, 15-30-164,
11 15-30-246, 15-30-1101, 15-30-1102, 15-30-1112, 15-30-1113, 15-30-1114, and 15-30-1121 are intended to be
12 renumbered and codified as an integral part of Title 15, chapter 31.

13 (2) Sections 15-30-171 through 15-30-179 are intended to be renumbered and codified as an integral
14 part of Title 15, chapter 6, part 1.

15
16 **NEW SECTION. Section 129. Codification instruction.** (1) [Sections 57, 59, 62, 64 through 69, and
17 71 through 80] are intended to be codified as an integral part of Title 15, chapter 68, and the provisions of Title
18 15, chapter 68, apply to [sections 57, 59, 62, 64 through 69, and 71 through 80].

19 (2) [Sections 90 through 97] are intended to be codified as an integral part of Title 15, and the provisions
20 of Title 15 apply to [sections 90 through 97].

21
22 **NEW SECTION. Section 130. Contingent voidness.** (1) If ___ Bill No. ___ [LC 1916] is not passed by
23 the Senate and House of Representatives, then [this act] is void.

24 (2) If ___ Bill No. ___ [LC 1916] is not approved by the electorate at the general election held in November
25 2006, then [this act] is void.

26
27 **NEW SECTION. Section 131. Effective date.** [This act] is effective January 1, 2008.

28
29 **NEW SECTION. Section 132. Applicability.** [This act] applies to calendar years, tax years, and fiscal
30 years beginning after December 31, 2007, and to sales of tangible personal property and services after

1 December 31, 2007.

2

- END -